

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 vs. NO: CR-15-4268 JB

6 ANGEL DELEON, et al.,

7 Defendants.

8 VOLUME 15

9 Transcript of Jury Trial before The Honorable
10 James O. Browning, United States District Judge, Las
11 Cruces, Dona Ana County, New Mexico, commencing on
12 February 16, 2018.

13 For the Plaintiff: Ms. Maria Armijo, Mr. Randy
14 Castellano, Mr Matthew Beck

15 For the Trial 1 Defendants: Ms. Amy Jacks, Mr.
16 Richard Jewkes, Ms. Theresa Duncan, Mr. Marc Lowry,
17 Ms. Carey Bhalla, Mr. Bill Maynard, Mr. Ryan Villa,
18 Ms. Justine Fox-Young.

19 Jennifer Bean, FAPR, RDR, RMR, CCR
20 United States Court Reporter
21 Certified Realtime Reporter
22 333 Lomas, Northwest
23 Albuquerque, NM 87102
24 Phone: (505) 348-2283
25 Fax: (505) 843-9492

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1	I N D E X	
2	EXAMINATION OF ROY MARTINEZ	
3	By Mr. Castellano	4850
4	By Ms. Bhalla	4946
5	By Mr. Lowry	4950
6	By Mr. Villa	5030
7	By Ms. Jacks	5050
8	By Mr. Castellano	5054
9	By Ms. Bhalla	5069
10	By Mr. Lowry	5070
11	By Mr. Castellano	5073
12	By Mr. Lowry	5079
13	EXAMINATION OF JOEY ARANDA	
14	By Mr. Beck	5082
15	By Ms. Jacks	5095
16	EXAMINATION OF KATHERINE BRUSUELAS	
17	By Mr. Castellano	5100
18	By Ms. Duncan	5117
19	By Ms. Jacks	5126
20	By Mr. Castellano	5130
21	EXAMINATION OF THOMAS NEALE	
22	By Ms. Armijo	5133
23	By Mr. Lowry	5174
24	By Mr. Villa	5178
25	By Ms. Armijo	5188

1	By Mr. Lowry	5190
2	REPORTER'S CERTIFICATE	5193
3	EXHIBITS ADMITTED	
4	Defendants' FQ Admitted	5039
5	Defendants' M and N Admitted	5083
6	Defendants' Y3 Admitted	5020
7	Government 273, 274, and 275 Admitted	4935
8	Government 278 Admitted	5161
9	Government 279, 280, and 282 Admitted	5164
10	Government 434 Admitted	4888
11	Government 450 through 458 Admitted	5166
12	Government 688 and 689 Admitted	4852

13
14
15
16
17
18
19
20
21
22
23
24
25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 THE COURT: Good morning, everyone. I
2 appreciate everyone being here and ready to go on
3 time. Is there anything we need to discuss before
4 we bring the jury in? I think we've got them all
5 here today.

6 MR. VILLA: Your Honor, Ms. Fox-Young's
7 baby is still fighting the fever, so she's going to
8 try maybe to come by this afternoon. But it's kind
9 of like yesterday, where I think the evidence is
10 less about Mr. Perez, so --

11 THE COURT: Do what?

12 MR. VILLA: I think the evidence is less
13 about our case. So if the Court would excuse her
14 again, we'd appreciate it.

15 THE COURT: That's fine. Do you want me
16 to say anything, or just keep plowing ahead?

17 MR. VILLA: I think we can plow ahead. I
18 guess we could remind the jury.

19 THE COURT: Okay.

20 MR. VILLA: Just in the beginning, but --

21 THE COURT: Let me mention, one of the
22 jurors fell this morning crossing the street. It's
23 Ms. Bush, the one that's in the far corner up there.
24 I think she's more embarrassed than anything else.
25 She's kind of skinned up here. We'll kind of watch

1 her ankle and stuff, but I think she's okay. I
2 don't think I'll mention anything about it, because
3 I think she's been embarrassed about it. But she
4 did take a little bit of a tumble crossing the
5 street. I guess there is a little crack or
6 something there.

7 Ms. Jacks?

8 MS. JACKS: I'll be quick.

9 THE COURT: Let me have Ms. Standridge
10 explain. She can probably explain it better than I
11 can. This is juror number -- remind me which one it
12 was.

13 THE CLERK: Juror number --

14 THE COURT: What's her name?

15 THE CLERK: Ramona Becker.

16 THE COURT: Juror No. 16. So I guess that
17 that corner is struggling this morning. So why
18 don't you say what she received last night?

19 THE CLERK: At 10:50 last night she
20 received a Facebook post from a friend from high
21 school -- that she went to high school with -- that
22 she hasn't spoken to in years. And it was a picture
23 of this gentleman wearing a yellow hoodie with a Zia
24 symbol on the front of the hoodie. Nothing else was
25 indicated on the Facebook post. But she did feel

1 very uncomfortable receiving it, considering she had
2 not spoken to this individual for years.

3 THE COURT: Well, I sure don't like to
4 hear that, but I don't know what to do about it. Do
5 you?

6 MS. JACKS: Did she provide the name of
7 the person?

8 THE CLERK: She didn't give me the name,
9 but I believe she does have the name.

10 THE COURT: Why don't you get the name,
11 and let's turn it over to Deputy Mickendrow and let
12 them take a look into it.

13 THE CLERK: Okay.

14 MS. ARMIJO: And Your Honor, if we could
15 just keep this -- if we do get the names, the
16 parties -- if we could just keep it to attorneys
17 only and not include any clients or anything.

18 THE COURT: Say that again?

19 MS. ARMIJO: If we are, meaning the
20 attorneys, provided the names, can we keep it to
21 just attorneys' eyes only as opposed to any of the
22 defendants?

23 THE COURT: Would everybody be agreeable
24 to that if I can get that information?

25 MS. DUNCAN: I think initially for team

1 Baca, that's fine. There may be a reason that we
2 have to share it, and we can always approach the
3 Court and ask.

4 THE COURT: We'll provide it on an
5 attorneys'-eyes-only basis at the beginning, and
6 before anybody turns it over to anybody else,
7 approach the Court, and we'll go from there.

8 All right. So let's just get with
9 Mickendrow, turn this over to him, let him look into
10 it. Then we'll go from there.

11 MS. DUNCAN: Your Honor, can I ask one
12 clarifying question? Do we know, was this picture
13 of the person with the hoodie -- was this sent to
14 her as a personal message or just something that
15 just showed up on her Facebook feed?

16 THE CLERK: All she said was it showed up
17 on her Facebook at 10:50.

18 MS. DUNCAN: Thank you.

19 THE COURT: You had something, Ms. Jacks?

20 MS. JACKS: I did, Your Honor. And let me
21 just try to be as succinct as possible. On the
22 witness list today is a correctional officer who was
23 a witness to an assault that was on one of those bad
24 acts letters from Mr. Sanchez. And it's an assault
25 on a man named Daniel Munoz back in 2005. And I

1 have to remind myself that this isn't being offered
2 as bad acts, even though that's what we called it;
3 that this is being offered, I believe, as evidence
4 of racketeering activity to show that element of the
5 VICAR offense.

6 And when I was thinking about this last
7 night, it occurred to me that there was some
8 temporal requirement. In other words, in order to
9 be relevant or in order to meet the criteria for
10 that element of the VICAR offense, the enterprise
11 has to be engaged in racketeering activity at or
12 around the time of the crimes charged.

13 So my point in bringing this to the
14 Court's attention is: We're talking about VICAR
15 offenses alleged that occurred in March of 2014.
16 And what the Government has offered and, I guess,
17 continues to want to offer is evidence of other
18 racketeering activity specifically by Mr. Sanchez in
19 2005. And I would submit to the Court that that's
20 outside of the temporal element that is required for
21 the VICAR offense. This is not a substantive RICO
22 prosecution. This is not even a racketeering
23 conspiracy prosecution. And for the VICAR, the
24 racketeering activity does have to be related at
25 least in some degree in time to the alleged VICAR

1 offenses. So I would object based on that aspect of
2 it.

3 THE COURT: All right. Mr. Beck.

4 MR. CASTELLANO: Your Honor, one of the
5 requirements of an association-in-fact enterprise is
6 the ongoing nature of the enterprise. It's actually
7 a requirement for that part of the case, and so it
8 does come in for other reasons, including the fact
9 that it's an ongoing enterprise that would include
10 Daniel Sanchez' participation some years ago. Also,
11 at least one other witness believes that was the
12 assault that Mr. Sanchez did to earn his bones.

13 THE COURT: Well, I guess my thoughts are
14 that if you got some case law on temporal
15 requirements, I'd be glad to take a look at it. But
16 given the burden on the Government to try to prove
17 this association in fact, they can't just be
18 constrained to just a particular period of time in
19 which they're alleging the conspiracy acts that are
20 subject of the counts. They've got to have some
21 leeway to prove the association, and if the
22 organization has been around a number of years, it
23 would seem to me that's relevant and it shows
24 stability and shows structure and things like that.
25 So I don't know. If you've got some stuff to show

1 me, I'll take a look at it. But I'd be inclined to
2 not start slicing this by time, but I'll take a
3 look.

4 MS. JACKS: I'll see if I can provide the
5 Court with some authority.

6 THE COURT: All right. Mr. Beck.

7 MR. BECK: Your Honor, and I want to go
8 back to Government's Exhibit 305 and point out a
9 couple of things for the Court. The first thing I
10 want to point out, on page 2 of that transcript,
11 Bates No. 6039, Mr. Baca tells Bear not to give the
12 drugs to the two gentlemen that were later involved
13 in the assault.

14 THE COURT: Which line are you on?

15 MR. BECK: I am on -- halfway down. "Bear
16 already said he was gonna give you guys an issue."

17 Then he goes back, "So I go back and tell
18 Bear, 'These fuckers disrespect, me, ese.' Fuck
19 them. Don't give them fuck."

20 You heard from Baby Rob Martinez yesterday
21 that Bear, Dennis Trujillo, is an SNM member, and
22 Jesse Chavez, the gentleman with Mr. Baca, was an
23 SNM member. You heard also from Gerald Archuleta
24 that Bear, Dennis Trujillo, was an SNM member. And
25 you heard from Mr. Martinez yesterday Bear was a big

1 SNM drug dealer. And so you heard the other day
2 from Mario Rodriguez that the main philosophy of the
3 SNM is to back up your brothers if they're
4 disrespected. That's what makes this an SNM battle.

5 Then if you go to the -- two pages forward
6 to page 4, this is the evidence I was saying links
7 it up for the jury. This gives the jury, a
8 reasonable juror, a basis to find that this is an
9 SNM incident. At the top of page 4, Mr. Baca is
10 telling Eric Duran, "And fucking Robert says, 'I'll
11 go wit chu, carnal.'"

12 So that's saying Robert Gutierrez, who was
13 involved in the murder with Pup the next day, tells
14 Mr. Baca, "I'll go with you, carnal."

15 Mr. Baca says, "You're not even a carnal,
16 ese. Just kick back, no?"

17 The testimony throughout this trial has
18 been, "carnals" is a way to refer to other SNM
19 members. He's telling Robert Gutierrez that he
20 doesn't need to go to this SNM fight, this SNM
21 stabbing, because Mr. Gutierrez is not a carnal.
22 He's not an SNM member. He's not a brother. So
23 that's the evidence that proves that this isn't just
24 a personal beef; this is an SNM hit. As Mr. Baca
25 says, you don't need to go, because you're not an

1 SNM member. I'll point the Court to U.S. against
2 Platero.

3 THE COURT: Why don't we do this? Let's
4 go ahead and bring the jury in and if you need to
5 give me a case, you can do that a little bit later.

6 All right. All rise.

7 (The jury entered the courtroom.)

8 THE COURT: Well, good Friday morning to
9 everyone. I appreciate everybody being back and
10 ready to go, and I hope we'll get a good day's worth
11 of work in today. Again, I appreciate the way
12 you've gone about your task. It was fun last night
13 on the way back to the hotel, I talked to my little
14 grandson. He got a Huffy bicycle, black and green.
15 It's sort of nice, about a world in which people
16 still appreciate a Huffy bicycle. He was eating
17 corn chips and a corn dog -- Sun Chips and a corn
18 dog. So we talked about the history of the corn
19 dog. I think it was invented at the South Dakota
20 State Fair. He and I said that we needed to find
21 that guy and congratulate him, because it's one of
22 the great inventions of America.

23 All right. I appreciate everybody's hard
24 work. We'll try to get good work today and take a
25 weekend here.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 All right. Ms. Armijo, did you still
2 intend to call -- Mr. Castellano, Mr. Martinez, Roy
3 Martinez?

4 MR. CASTELLANO: That's correct, Your
5 Honor, Roy Martinez.

6 THE COURT: So we'll get him in here.

7 All right. Mr. Martinez, if you'll come
8 up and stand next to the witness box, and I'll swear
9 you in.

10 Okay. If you'll raise your right hand to
11 the best of your ability before you're sworn.

12 ROY MARTINEZ,
13 after having been first duly sworn under oath,
14 was questioned, and testified as follows:

15 THE COURT: Be seated and state your name
16 for the record, and spell your last name.

17 THE WITNESS: Roy Martinez.
18 M-A-R-T-I-N-E-Z.

19 THE COURT: Mr. Martinez, Mr. Castellano.

20 MR. CASTELLANO: Thank you, Your Honor.
21 May I have a moment to approach counsel?

22 THE COURT: You may.

23 DIRECT EXAMINATION

24 BY MR. CASTELLANO:

25 Q. Good morning, Mr. Martinez.

1 A. Good morning.

2 Q. Were you one of the defendants initially
3 charged in this case?

4 A. Yes, sir.

5 Q. And as a result of the charges, can you
6 tell the members of the jury whether you pled guilty
7 to some charges?

8 A. I pled guilty to conspiracy to kill Gregg
9 Marcantel and Dwayne Santistevan.

10 Q. As part of that plea, did you enter into a
11 plea agreement with the United States?

12 A. Yes, sir.

13 Q. And with that plea agreement, was there
14 also what's called an addendum to the plea
15 agreement?

16 A. Yes.

17 MR. CASTELLANO: Your Honor, at this time
18 I move the admission of Government's Exhibits 688
19 and 689.

20 THE COURT: Any objection?

21 MR. VILLA: No, Your Honor.

22 THE COURT: Not hearing any objections,
23 Government's Exhibits 688 and 689 will be admitted
24 into evidence.

25

1 (Government Exhibits 688 and 689
2 admitted.)

3 MR. CASTELLANO: May I publish to the
4 jury, Your Honor?

5 THE COURT: You may.

6 BY MR. CASTELLANO:

7 Q. Mr. Martinez, I'm going to show you
8 Government's Exhibits 688. There is going to be a
9 screen to your left, if you can see it, and there is
10 also a screen here up against the wall. Are you
11 able to recognize that document, sir?

12 A. Yes.

13 Q. And what is it?

14 A. It's my plea agreement.

15 Q. Let me turn your attention to the second
16 page of that agreement. And did you understand that
17 for each of those counts, which were Counts 9 and 10
18 in your indictment, conspiracy to murder, each
19 carried a term of ten years for each of those
20 counts?

21 A. Yes.

22 Q. Do you understand that your total exposure
23 then could be up to 20 years?

24 A. Yes.

25 THE COURT: Mr. Martinez, are you able to

1 either move your chair or move the microphone a
2 little closer to you? Why don't we lift that
3 microphone up a little bit? Let's try that.

4 Q. And you mentioned you pled to two
5 conspiracies, one to murder of Gregg Marcantel and
6 the other Dwayne Santistevan. Can you tell the
7 members of the jury who you agreed with in those
8 charges.

9 A. I agreed with Pup, and Baby Rob, and Eric
10 Duran.

11 Q. And who is Pup?

12 A. Anthony Baca.

13 Q. Let me turn your attention to Government
14 689. Can you see that document, sir?

15 A. Yes.

16 Q. What is it?

17 A. It's part of my plea. My agreement to
18 testify.

19 Q. And I see you're squinting a little bit
20 today. Do you normally wear glasses?

21 A. Yes.

22 Q. Do you have your glasses today?

23 A. No, they're broken.

24 Q. If you have any difficulty seeing
25 anything, will you let us know and we'll bring you

1 the documents closer?

2 A. Yes. I can see them.

3 Q. As part of this agreement, what did you
4 agree to do?

5 A. I agreed to testify and tell the truth
6 about my role in everything about the SNM.

7 Q. And as part of this agreement, do you
8 know -- or do you understand that your sentence
9 could be reduced for truthful testimony?

10 A. Yes.

11 Q. And do you understand who ultimately makes
12 that decision?

13 A. Yes.

14 Q. Who makes that decision?

15 A. The judge.

16 Q. Sir, I want to turn your attention now
17 to -- we'll start with Government's Exhibits 568 to
18 573, which have already been admitted, beginning
19 with Exhibit 568. Who is that person?

20 A. That's me.

21 Q. Can you tell the members of the jury if
22 you were arrested on December 3, 2015?

23 A. Yes.

24 Q. Following that arrest, then, were you
25 basically processed and photographed?

1 A. Yes.

2 Q. Let me turn to 569. I'm drawing your
3 attention to your abdomen here, starting with -- I'm
4 going to circle two things on the left side of your
5 abdomen. What have I circled there?

6 A. That's VSJ 16; that's for San Jose Street
7 Gang.

8 Q. Were you ever a member of that gang?

9 A. Yes.

10 Q. When did you first become a member?

11 A. When I was about 13, 14.

12 Q. How did you get into that gang?

13 A. I got ranked in.

14 Q. And how -- can you tell the members of the
15 jury how that process works?

16 A. I got -- you know, fought my way through
17 about five, six people, six other gang members. And
18 once I took that beating, I was pretty much a gang
19 member after that.

20 Q. Where is that gang located?

21 A. In Albuquerque, New Mexico, on the south
22 side.

23 Q. I'm going to now circle a tattoo on the
24 right side of your abdomen. What have I circled
25 there?

1 A. A Zia with the SNM inside of it.

2 Q. What is that tattoo?

3 A. That's Sindicato de Nuevo Mexico. That's
4 my -- what we call a plaquiaso.

5 Q. Which is what?

6 A. It's a symbol, a plaque, to represent that
7 you're part of that gang.

8 Q. So are you now or at some point were you
9 an SNM Gang member?

10 A. Yes.

11 Q. When did you first join that gang?

12 A. In 1995.

13 Q. Let me turn your attention to Exhibit 570.
14 And what does the 16 stand for in this photograph?

15 A. 16 stands for East Side San Jose. It's
16 just a number we had for the East Side.

17 Q. And is there another side to the San Jose
18 gang?

19 A. Yes, it's South Side.

20 Q. And even though you had an East Side and a
21 South Side, were they still considered one gang, or
22 were they separate gangs?

23 A. Yeah, we're still considered one.

24 Q. Exhibit 571. While we're doing that, do
25 you have any other SNM tattoos?

1 A. No, sir, just on my neck.

2 Q. Let's turn to Exhibits 571 and 572. Where
3 did you get these tattoos?

4 A. Some in prison, some on the streets. The
5 SNM I got in prison.

6 Q. Who gave you that tattoo, if you remember?

7 A. Some white boy that was doing time with us
8 at the time. He was an artist.

9 Q. And I'm going to circle on your right
10 shoulder here something else. What have I circled?

11 A. My nickname is Shadow.

12 Q. So are you also known as Shadow?

13 A. Yes.

14 Q. And is there anyone else in the gang known
15 as Little Shadow?

16 A. Yes.

17 Q. Who is that person?

18 A. Billy Cordova.

19 Q. Turning next to 573, I want to go over
20 some of your criminal history with you. Can you
21 tell us whether in 1993 you were convicted of
22 unlawful use of a motor vehicle?

23 A. Yes.

24 Q. And in that case were you sentenced to
25 prison time at all?

1 A. No.

2 Q. Also at that time, this is a reminder, in
3 1993, were you an SNM Gang member?

4 A. No.

5 Q. Turning to 1994, were you convicted of
6 aggravated assault including a firearm enhancement?

7 A. Yes.

8 Q. And what happened as a result of that
9 conviction?

10 A. I was sent to prison for three years.

11 Q. Where did you end up in prison? Which
12 facility?

13 A. The Main penitentiary.

14 Q. Is that the one they call Old Main?

15 A. The Old Main, yeah.

16 Q. About how old were you at that time?

17 A. About 21, maybe.

18 Q. What happened when you first arrived at
19 the prison facility? Did you run into anybody you
20 knew?

21 A. Yes.

22 Q. Who did you run into?

23 A. A couple of the homies from San Jose. And
24 the rest I really didn't know. They were just a
25 bunch of old-timers. I didn't really know anybody.

1 Q. Did you run into somebody named Mike
2 Dallas?

3 A. Yes.

4 Q. Who was Mike Dallas?

5 A. He was an LC.

6 Q. What's an LC?

7 A. Los Carnales, another clique at the time.

8 Q. What was your relationship with Mike
9 Dallas?

10 A. I really didn't have a relationship with
11 him. I had a run-in with him over a girl, something
12 that happened on the streets prior to going to
13 prison. His wife seen me in the visit and said I
14 was the one that got his brother, beat up his
15 brother. And so he said that I got one of his
16 homies -- I guess because her brother was LCL, so he
17 thought I was -- I guess he had to do something
18 about it, or whatever. So that's where it all
19 started.

20 Q. You mentioned LCL. What is that?

21 A. Los Carnales Locos.

22 Q. Was that the same gang as Los Carnales, or
23 were they --

24 A. Well, they were claiming it on the
25 streets. But at the time, I really didn't even know

1 either one of them.

2 Q. So when you had a confrontation with Mike
3 Dallas, was that on the streets, or was it in
4 prison?

5 A. It was in prison.

6 Q. What happened as a result? You said that
7 you thought he felt he had to do something about
8 what happened on the streets. What eventually
9 happened?

10 A. Well, he called me out, and said he was
11 going to decide my fate; I guess decide what he was
12 going to do, him and his clique, you know, what they
13 were going to do. And in the meantime, I was just
14 to wait. And eventually, he called me out to the
15 yard. We went out to the yard. And it was going to
16 be one-on-one. I had two shanks. He had one. And
17 the best man win, you know, whoever survives, or
18 whatever.

19 Q. Where did you get the shanks?

20 A. Little Chaparro was SNM. He volunteered
21 to help me to go against Mike Dallas, him and Mosco.

22 Q. And at this point are you an SNM Gang
23 member?

24 A. No.

25 Q. You mentioned the name Mosco. Who is

1 that?

2 A. Matthew Cavalier.

3 Q. All right. So what happens out in the
4 yard?

5 A. We go to yard. We were about to get it,
6 and he starts making a scene with his shank and
7 taking off his shirt, like he was, like, going crazy
8 like, you know. And the COs seen him in the tower,
9 and they came and tackled him, locked him up.

10 And later on that night, because of what
11 happened, Chaparro got mad, and they stabbed two LCs
12 in the cell block 4 at the time.

13 Q. Do you remember Chaparro's real name?

14 A. I think so. It's Manuel -- I can't
15 remember.

16 Q. Okay. And what was the relationship at
17 that time between SNM and the Los Carnales?

18 A. They had a peace treaty, from my
19 understanding. I really didn't know. I was a young
20 kid, just coming into prison, so I didn't know the
21 politics or anything. But from what I found out
22 later, they had a peace treaty going, you know, some
23 of them, between Marty Barros, RB, and a few of
24 them. And then the LCs, they had a peace treaty.
25 And so I guess, when that stabbing happened, that

1 broke the peace treaty. When Chaparro did that, it
2 broke the peace treaty.

3 Q. Who is Marty Barros?

4 A. He was a leader of SNM at the time.

5 Q. And how long had you been in prison before
6 this confrontation happened?

7 A. I really don't know.

8 Q. So what happened with you, then, as a
9 result of this peace treaty being broken?

10 A. As a result, I guess some conversations
11 happened where they wanted -- in order to make
12 another peace treaty, that they wanted to take me
13 out, because they said I was a problem; I
14 disrespected one of their brothers, the LCs. So
15 they wanted to take me out.

16 And so Marty agreed, and said, "We'll kill
17 him. We'll take him out, and we'll go back to
18 having a peace treaty."

19 Q. Who was supposed to take you out?

20 A. Mosco.

21 Q. Is that Matthew Cavalier?

22 A. Yes.

23 Q. And did Matthew Cavalier actually tell you
24 about this hit?

25 A. Yes. He called me out one day, and told

1 me that -- what their plans were, that they wanted
2 to hit me -- they wanted him to hit me. And he was
3 asking me to throw ice on the CO, so I could PC and
4 get out of there, so I wouldn't have to get hit.
5 Because he didn't want to do it, because he liked
6 me, I guess, you know.

7 Q. So, yeah, what happens when you throw ice
8 on a corrections officer?

9 A. They'll lock you up for assault.

10 Q. And what does it mean to PC?

11 A. Protective custody. You know, your life
12 is in danger, or something. So it was a PC move, is
13 what it's called, a PC move, where you throw ice on
14 a CO; it doesn't look like a PC. It looks like you
15 assaulted a CO. But in all reality, you checked it
16 in.

17 Q. How did you feel about doing that?

18 A. I didn't want to do that.

19 Q. Why not?

20 A. Well, because the way I was brought up at
21 the time, I just couldn't do it. I told him: "I'm
22 not going to go out like that. You've got to do
23 what you got to do," I told him. So I stayed.

24 Q. And how do people generally feel about
25 people who PC in prison?

1 A. Once you do that, you can never go back to
2 the line.

3 Q. All right. So you said you didn't want to
4 PC. So what happened, since you basically stuck
5 around?

6 A. Well, I went to Charley Sedillo, an
7 old-timer, and asked him for help, saying that "The
8 cliques want to get me, and they just alerted me now
9 that they want to hit me, that I'm a mark, so I need
10 help."

11 So they gave me another strap, another
12 shank, and suited me up and had me ready, just in
13 case something went down again, you know.

14 Q. Was that person a member of any gang or
15 was he just --

16 A. No, he was a neutral. He didn't belong to
17 no gang.

18 Q. But he still agreed to help you?

19 A. He agreed to help me because I guess he
20 liked me. I was a youngster, you know.

21 Q. Did you know anybody at that time named
22 Ramon Clark?

23 A. No. At the time I never knew who he was,
24 until he called me out one day. I guess -- well,
25 after I told Matthew that, he went and talked to

1 Ramon Clark. Later, I found this out. At the time
2 I didn't know what was going on. But Ramon called
3 me out -- Razer is his name -- he called me out.
4 And I thought they were going to hit me that day.
5 But he called me out and said that, because I
6 didn't -- you know, he didn't agree with what that
7 peace treaty -- and he liked my style, the way I
8 didn't PC and go out that way, and wanted me as a
9 soldier, wanted me to hit Leroy Mascarenas, and
10 asked me if I wanted to be SNM.

11 Q. And was he SNM?

12 A. Yes.

13 Q. Who was Leroy Mascarenas?

14 A. He was a leader of the LCs.

15 Q. Did you agree to do that?

16 A. Yes.

17 Q. Was this supposed to happen at any
18 particular point in time?

19 A. Yes, it was going to happen after they hit
20 with some drugs. They were going to get a clavo
21 that weekend, or something, and I was to wait until
22 after the clavo to hit, to make my move.

23 Q. What's a clavo?

24 A. Drugs.

25 Q. Why was it important to wait for the drugs

1 to arrive before you hit Leroy Mascarenas?

2 A. I guess because that was important to them
3 at the time; getting their drugs was more important.
4 So everyone was happy when they're locked down.
5 Because we go on lockdown after, you know, things
6 like that happen.

7 Q. So in other words, if you're locked down,
8 is it more difficult to get drugs?

9 A. Yes.

10 Q. Okay. So what happens as a result of this
11 agreement you made to hit Mascarenas?

12 A. Well, I waited for him to give me the
13 signal. But during that time I'm living in cell
14 block 3 with about maybe eight, nine LCs that lived
15 in the cell block with me, and maybe two SNM
16 members -- the one that voted me in; Bernie Atencio;
17 and Boxer, Tascio Amador, were the two that voted me
18 in.

19 Q. What's Mr. Amador's first name?

20 A. Tascio Amador.

21 Q. So as part of this process, then, did you
22 need to be voted in by somebody? And were those the
23 two people?

24 A. Those were two -- there was actually four:
25 Ramon Clark, Bernie, and Tascio, and Matthew

1 Cavalier.

2 Q. At this point, did you get along pretty
3 well with Matthew Cavalier?

4 A. Yeah, he seemed all right. He's one of
5 the first ones that would look out for me when I
6 first drove up, because I didn't really know too
7 much about the prison.

8 Q. And at this time, were the pods mixed?
9 You mentioned there were LC members and SNM in the
10 same pod.

11 A. Yes, it was mixed. It was real relaxed
12 then, the security and stuff. It wasn't like it is
13 now, where everyone is separated and stuff. Back
14 then, it was just open, wide open.

15 Q. Is this about the 1995 timeframe?

16 A. Yes.

17 Q. What ends up happening in the pod, and are
18 you able to hit Mascarenas?

19 A. Well, I'm waiting -- it was going to
20 happen that night, I know, because it was a Sunday
21 or something like that, Saturday or Sunday, I can't
22 remember, but I know it was going to be after the
23 visit, and once he passed by and gave the okay, I
24 was going to go hit him after count or something
25 like that.

1 Q. Who gave the okay?

2 A. Ramon. I was just waiting on him. He
3 told me not to listen to nobody, just him. If
4 anyone says anything, not to listen to them. When
5 he said it, that's when I do it.

6 Q. Okay. What happens after he gives you the
7 signal?

8 A. Well, he didn't give me the signal yet. I
9 was waiting. What happened is, I got word from him.
10 He didn't actually come and do -- he got -- I got
11 word -- I think it was Mosco or one of them that
12 came by -- I can't remember exactly who came and
13 say, "Hey, after count, take care of that."

14 And so I waited till after count. But
15 unfortunately, I got hit before count.

16 Q. All right. Tell us, what do you mean by
17 getting hit?

18 A. Well, during that time, I was already
19 prepared. I had a shank in my pocket. And when I
20 was going out to get some ice for Charlie Sedillo, I
21 came back in and noticed that the two LCs that were
22 playing dominoes were no longer playing dominoes;
23 and that's when I got suspicious, knew something --
24 you could feel it. You could feel when something is
25 about to happen. And as I was walking down to -- I

1 lived all the way at the end of the cell block.

2 As I got to my cell, Sick Vic jumped out
3 and started stabbing me. While I was trying to pull
4 out my shank to start stabbing him, Rick Bonnie hit
5 me with a pipe. I think it knocked me out, or
6 something, because I woke up on the floor.

7 Q. And do you know Sick Vic's real name?

8 A. Victor Herrera.

9 Q. What eventually happened to him?

10 A. He got killed. He got murdered.

11 Q. How long after this 1995 incident?

12 A. '96, I think.

13 Q. And was that an SNM hit on him, or did
14 someone else do that?

15 A. Yes, it was SNM.

16 Q. Taking you back to this incident now with
17 Sick Vic and Rick Bonnie, what do you do after
18 getting knocked down to the floor?

19 A. Well, Tascio Amador, Boxer, helped me --
20 he threw a chest -- if it wouldn't have been for
21 him, they probably would have killed me. Boxer
22 threw a metal chest on him, hit one of them on the
23 head. They backed off and were surprised, because
24 he's SNM. They didn't know I was SNM at the time
25 when they hit me. So they were surprised when he

1 said, "You just hit my carnal." And they started
2 running. They got scared and they ran. I got up,
3 got my shank to run after them with Tascio. But I
4 was a little bit dazed and confused a little bit.

5 And then when we were about to hit Leroy
6 Mascarenas, he was at the top of the stairway.
7 That's when the COs sprayed us, and I just went down
8 after that, because my arm was swollen from the
9 pipe. They cuffed us, took us out, took me to the
10 hospital. And shortly after -- about two or three
11 weeks after that, Arturo hit Leroy Mascarenas.

12 Q. Arturo who?

13 A. Garcia.

14 Q. When you say he "hit" him, what kind of
15 damage or injury did he cause to him?

16 A. He stabbed him, tried to kill him.

17 Q. And what type of wounds did you have once
18 you get to the hospital?

19 A. Ice pick. I think they nicked my kidney.
20 I had a stab wound in the head and the chest, and I
21 think they stabbed me nine times. And the pipe is
22 what did more damage. I got stitches on my
23 forehead, and my arm was pretty messed up from the
24 pipe.

25 Q. So you've now been assaulted by two people

1 in prison. Do you talk to the law enforcement
2 authorities about what happened to you?

3 A. No.

4 Q. Why not?

5 A. Because I didn't want to snitch. I didn't
6 want to rat.

7 Q. So were they ever prosecuted for that
8 assault on you?

9 A. No.

10 Q. And since you didn't report it to
11 authorities, how were you otherwise going to take
12 care of this issue?

13 A. Try to kill him.

14 Q. Back in those days, were there cameras in
15 the pods?

16 A. No.

17 Q. Back then, did you admit that you were an
18 SNM Gang member to others, including corrections
19 officers?

20 A. No.

21 Q. Why would you not admit that?

22 A. They told me to keep it quiet, not to brag
23 about it, not to put it out there. We're not a
24 street gang, I was told.

25 Q. And then what kind of rules were given to

1 you at that point in time regarding the gang?

2 A. There wasn't really no set rules. It's
3 just -- you would just -- like when I was around
4 old-timers and stuff, they would just school me on
5 pretty much how to conduct yourself, how to be --
6 you know, with -- how to stay quiet and not say
7 nothing, things like that. Mostly about that.
8 Just, if you're going to do something, do it. Don't
9 talk about it to no one.

10 I didn't get into politics or nothing at
11 that time. I was a really young kid, and I didn't
12 really know too much.

13 Q. So you told the jury that you got voted
14 in. But at some point did you have to do what's
15 called earning your bones?

16 A. Yes.

17 Q. How did you do that, and when?

18 A. I was supposed to do it when I was going
19 to hit Mascarenas. But I got hit instead. So
20 earning my bones, I needed to kill somebody, or at
21 least attempt it, try it. And I didn't earn that
22 until 1998, when I came back to prison. I stabbed
23 Brett Watson.

24 Q. Okay. What charges brought you back to
25 prison?

1 A. Murder.

2 Q. And how long had you been out before that
3 murder happened?

4 A. Four months.

5 Q. Okay. We're going to come back to that
6 murder in a little bit. Let me ask you about Brett
7 Watson. Who was he?

8 A. He was a Supreme White Power.

9 Q. And why was he selected?

10 A. He had it on his neck, SWP on his neck.
11 And when I came -- when I went -- drove up to
12 Cruces, to where we were -- in the unit where we
13 were at, I was in the pod with him. And just months
14 before that, they had hit Chicken Little. The same
15 group had hit Chicken Little.

16 Q. Who was Chicken Little?

17 A. One of the carnals, one of SNM.

18 Q. Was he in your facility or another
19 facility?

20 A. He was in another facility. And they had
21 hit him, the same people. So when I drove up, I
22 asked Chaps about it, and -- Chaparro was the oldest
23 one there at the time. So I asked him about it. I
24 asked him, I asked him if -- "What's going to happen
25 with this guy? He's living with me, you know.

1 Aren't we supposed to do something?"

2 And once I brought that up, he said,
3 "Yeah, it needs to get done, if that's who it is."

4 So from there, we plotted. Just me and
5 him, though. And because I already knew him from
6 the Main, and how to keep quiet and stuff, we took
7 care of it really slick, and no one really knew
8 about it.

9 Q. And you mentioned a little bit ago that
10 you drove up to the facility. What does that mean?

11 A. Well, when we arrive, when we go to
12 another facility. That's just the way we call it,
13 talk.

14 Q. What -- how did you deal with Brett
15 Watson?

16 A. Well, I befriended him, became his friend,
17 started talking to him, and you know, making him at
18 ease, make him comfortable, so he don't think
19 anything is up.

20 Q. And then what eventually happened to him?

21 A. Well, at the last minute, kind of like a
22 day or so before, there was two other white boys
23 that were living with him, and I used them. I went
24 and told them that they need to take care of their
25 own, or we're going to take care of you. Because

1 the pod was full of SNM, so they were outnumbered.
2 They were not going to win, if they didn't listen,
3 so -- but at the same time nobody knew -- in the pod
4 with me, none of the SNM knew. I was the only one
5 that knew at the time.

6 And so I pulled them in, told them that
7 "We need to take care of this. I'm going to make
8 sure it happens. I'm going to go in there with you,
9 and we're going to strangle him. Because stabbing
10 him is too sloppy, and strangling him will get him,
11 you know, killed. It's clean, and he will -- we
12 probably could get away with it."

13 So when -- the day we were going to go do
14 it, I told him to make a ligature. I told Spider --
15 he was a white boy, so I just know him as Spider --
16 I told him, "Make a ligature, and be ready in the
17 morning, because we're going to hit him first thing
18 in the morning while everyone goes to chow."

19 And then, at the last minute, I told a few
20 carnals what was going to happen so they could stay
21 back, just in case something went wrong; like two of
22 them, two carnals to stay back. The rest go to
23 chow. When they go to chow, we're going to hit him.
24 And what happened -- everything happened according
25 to plan. As we went in there, though, he was

1 asleep, and everything, but the guy had a stinger
2 cord, which was --

3 Q. What is that?

4 A. It's like a plug, just like a regular
5 plug, electrical plug. And I told him, "That's not
6 going to work, man. That's going to break." I told
7 him, "It's too late now, we've got to go now,
8 because it's got to be done today."

9 And before that, though, Chaparro had made
10 me a shank like he did in the Main. He was good at
11 that. So he's actually the one that taught me how
12 to make them. Once he made that, gave me that, I
13 was ready. And I didn't like to hold weapons too
14 long before I use them, because I didn't want to get
15 caught with it.

16 Q. What did you do to Brett Watson?

17 A. I went into the room and held him down at
18 first, so that Spider could choke him. He wrapped
19 it around. He started choking him. But just like I
20 knew it would do, the thing snapped and broke, and
21 once it did, the guy let out a scream so loud that
22 we had to do it fast, because I think that's when
23 the CO heard, and was wondering what was going on.
24 And I started stabbing him in the back area. Once
25 that happened, you know, once it broke, I started

1 stabbing him. And then Spider started stabbing him
2 also with the icepick in his neck. And he just laid
3 there. I thought he was dead. I walked out, went
4 and cleaned up, and threw the shank down the toilet
5 in Spider's room, so if anyone gets caught, it's the
6 white boys that got caught, not us. And cleaned up,
7 and that was it.

8 After that, they shook down, they
9 investigated. And I guess he went to the hospital,
10 and, you know, surgery, whatever, and survived. And
11 because he didn't say nothing, they didn't know
12 really who -- they were just going off confidential
13 information after that.

14 Q. Let me ask you this: Did you ever get
15 prosecuted for that crime?

16 A. No.

17 Q. Did Brett Watson ever serve as a witness
18 against you?

19 A. No.

20 Q. And as a result -- did he survive?

21 A. Yes.

22 Q. Even though he survived, did you still
23 earn your bones for that?

24 A. Yes.

25 Q. Is that when you got your tattoo?

1 A. Yes, I actually got the tattoo two nights
2 before I stabbed him.

3 Q. And you mentioned Spider. Is that a
4 person named Calbert, or is it a different Spider?

5 A. That's a different Spider.

6 Q. So that was 1998?

7 A. Yes.

8 Q. At some point in time, had you met someone
9 named Angel Munoz?

10 A. Yes. That was back in '96.

11 Q. Two years before this?

12 A. Yes.

13 Q. And what you were doing in those two years
14 between meeting Angel Munoz and assaulting Brett
15 Watson?

16 A. Being schooled, pretty much. I learned a
17 lot through Angel and Gerald Archuleta. They're
18 actually the ones that schooled me.

19 Q. And so going back to Brett Watson, was
20 that hit on him in retaliation for the SWP's
21 assaulting SNM?

22 A. Yes.

23 Q. Did you do that because it was expected of
24 you as a member of the SNM?

25 A. Yes.

1 Q. All right. Having met Angel Munoz, what
2 did you do for him or with him? What was your
3 relationship with him?

4 A. I looked up to him as he was a leader. If
5 he said to do something, I would do it if he asked
6 me to. Even if he didn't ask me, if he just told me
7 to do something, I would do it.

8 Q. Why were you so loyal to him?

9 A. Because he was the jefe. And he was
10 the -- he was the -- from what I heard, he was a
11 killer. He was a person to look up to.

12 Q. Back in those days, did you have larger
13 yards where you would have recreation with everyone,
14 or were they the cages that are smaller, like now?

15 A. No. Large yards. It was open -- it was
16 wide open. That's what we call wide open.

17 Q. And what would you do with weapons in the
18 yard?

19 A. Stash them, have them ready in certain
20 places we knew where they were, in case something
21 happened.

22 Q. And what were you willing to do for Angel
23 Munoz back in those days?

24 A. What was I willing to do?

25 Q. Yes.

1 A. Kill for him.

2 Q. What eventually happens to the LCs? Do
3 they stick around as a rival gang, or do they get
4 smaller?

5 A. No, they started getting -- they were
6 pretty much dismantled. The SNM had took over the
7 yards at the time because if there was an LC there,
8 one would get hit and maybe two or three would PC,
9 and they just got off the line. They wouldn't go
10 onto the line. And if they would go onto the line,
11 they would get hit right away. So yeah, they were
12 pretty much dismantled.

13 Q. I want to go back to a murder charge you
14 mentioned earlier. So it sounds like you got
15 released from your aggravated assault sentence, you
16 were on the streets, and what were you doing once
17 you were released back to the streets?

18 A. I was -- I had parole -- supervision,
19 supervised parole, so I had to do things carefully.
20 But Angel would send his wife to -- if I had dope, I
21 would give it to him -- give it to her for him. If
22 not, I would go with her to go pick up some. So I
23 was -- still had to be loyal to him even on the
24 streets.

25 Q. And what was the purpose of picking up

1 either money or dope for him?

2 A. So we can help him out in prison, while
3 he's in prison, so he could have it.

4 Q. So were you responsible for sending drugs
5 or money into the prison to support --

6 A. Yes.

7 Q. Okay. So during this time, you eventually
8 strike up a relationship with a law enforcement
9 officer?

10 A. Yes.

11 Q. How does that come about?

12 A. We just started having sex, me and -- she
13 was a sergeant at the time. And it went on from
14 there. We just -- she started introducing me to big
15 people and started selling drugs, guns, whatever,
16 whatever.

17 Q. How did you first meet her?

18 A. Through another girl that I was dating,
19 through her cousin. It was -- I guess it was her
20 auntie or something like that.

21 Q. And how did you very first meet her?

22 A. It was at Cinco de Mayo, around that time.
23 And we just went out and partied. And I was staying
24 at the house at the time, too, at her niece's house.
25 And she came, and we just started partying, and that

1 was it. We hit it off from there.

2 Q. Did you know she was a police officer at
3 the time?

4 A. Yeah, when I first, first met her, yeah,
5 she was -- I didn't know she was a cop until the
6 very first time. She drove up in a cop car, and it
7 kind of freaked me out, and I started stashing all
8 my stuff. I thought they were coming for me.

9 Q. What were you stashing?

10 A. Dope, gun -- I had a gun and some dope.

11 Q. Okay. So you think she might be there to
12 arrest you or search --

13 A. Yeah, search the house, whatever, because
14 I was on parole at the time.

15 Q. And what happened?

16 A. She just came -- they introduced me to
17 her, and we started talking. And by that nighttime
18 we were partying and having sex.

19 Q. And about what year was this?

20 A. '98.

21 Q. How long does this go on with the
22 relationship with her and the drug-dealing and all
23 of that stuff?

24 A. About a couple of months, I'd say.

25 Q. What eventually happens to the two of you?

1 A. Well, we just started getting in deep with
2 some, you know, money, drugs, doing some pretty bad
3 things. For her being a cop, she was real paranoid,
4 you know, because of all that stuff. Me, I didn't
5 really care. I just got out of prison and I was
6 just doing my thing. But it ended up -- we ended up
7 getting -- I guess she got herself into some things
8 more. I found out later. At the time I didn't know
9 what she was into, how deep she was into it until
10 after I got my discovery and the murder happened.

11 Q. All right. Tell us about that murder,
12 then. How do you find yourself in that position?

13 A. She took me out that night to -- well, we
14 would go out drinking, you know, almost every night
15 after she got off of work. But that night she --
16 when she took me -- because I was on the run by that
17 time. I was on the run from the parole. I had
18 already had broke the bracelet, and just went on the
19 run. And so she knew it, but she would always flash
20 her badge. If she got pulled over, she would flash
21 her badge, and they wouldn't even mess with her. We
22 had gotten pulled over a few times at checkpoints,
23 and they never asked about me ever.

24 But that night she told me to leave my ID
25 behind. And that's when I caught something -- that

1 something ain't right, because --

2 Q. Why was that?

3 A. Well, because usually, she won't even --
4 she's not worried, because she has her badge, you
5 know; she could just flash it and we're good. But
6 that night, she told me to leave it behind. And I
7 felt something -- you know, because I already had
8 been stabbed before, so I knew -- I get that tense
9 feeling that something is not right, something is
10 not right about that night. And --

11 MR. LOWRY: Your Honor, can we just object
12 to the narrative form?

13 THE COURT: I'm sorry?

14 MR. LOWRY: Can we object to the
15 narration, and get some questions and answers?

16 THE COURT: All right. Why don't you
17 break it up a little?

18 MR. CASTELLANO: Sure, Your Honor.

19 BY MR. CASTELLANO:

20 Q. So you tell us that you get an uneasy
21 feeling. Do you do what she asks? Do you leave
22 your ID behind?

23 A. Yes.

24 Q. And what happens after that? Where do you
25 guys go?

1 A. To the Petroglyphs. She drives us up
2 there.

3 Q. Any particular reason why you're driving
4 out to the Petroglyphs?

5 A. She said it was to go drink and party and
6 stuff. But I didn't think that's what we were going
7 there for.

8 Q. What happens when you get out there?

9 A. There is another car about 100 yards away,
10 parked there. I assumed it was the rangers. I told
11 her that it might be the rangers; we need to get out
12 of here, because I'm on the run.

13 Q. And at this point, what time of day or
14 night is it?

15 A. It's around midnight.

16 Q. So it's dark outside?

17 A. Yeah. It was close to 12:00, 1:00 in the
18 morning.

19 Q. All right. So what happens?

20 A. I get her gun. When I'm hugging her, I
21 take her gun away.

22 Q. Why?

23 A. Because I was paranoid, and I got scared
24 that she was up to something. And I just said, "I'm
25 going to go stash it." I told her, "I'm going to

1 put it in the truck." But I didn't put it in the
2 truck. I kept it on me.

3 Q. And then what happened?

4 A. She kept asking for it back. And I said,
5 "No." And at one point she tried to come and get it
6 from me, and that's when I shot three times, and she
7 dropped.

8 Q. Why did you end up shooting at her?

9 A. Well, because she was going to come and
10 try to get the gun away from me, and I wasn't going
11 to let her.

12 Q. What were you worried about that night?

13 A. Getting killed or -- I mean, we were in so
14 deep in some stuff, and drugs and stuff, that I
15 didn't know what was going on. I mean, I was pretty
16 right. After -- when I got arrested and got my
17 discovery, I found out that I was pretty much right,
18 that there was something going on. But, yeah, I was
19 paranoid that there was a hit on me, or something
20 like that. Because she dealing with the Mexicans,
21 and we were in deep with that. So I was thinking
22 they were going to kill me.

23 Q. And whatever happened with the other
24 vehicle? How did that kind of play into --

25 A. One of the witnesses that found the body

1 said that they seen a car by the body. And that
2 when she tried to -- she was so scared that she
3 didn't want to go to the rangers, that she --
4 because the car was following her as she was
5 walking. And so she got in her car, and that car
6 followed her. And she finally got away from that
7 car, making moves, I guess, or something. That's
8 the way she described it in trial. And --

9 MR. LOWRY: Objection, foundation.

10 Q. Well, did that happen at your trial?

11 A. Yes.

12 Q. Are you telling us about witness testimony
13 at that trial?

14 A. Yes.

15 MR. LOWRY: Objection, hearsay.

16 THE COURT: Well, I guess I'll have to
17 sustain.

18 BY MR. CASTELLANO

19 Q. So you took that case to trial?

20 A. Yes.

21 Q. Correct. What happened as a result of
22 going to trial on that case?

23 A. I got found guilty and got a life
24 sentence.

25 MR. CASTELLANO: May I have a moment, Your

1 Honor?

2 THE COURT: You may.

3 MR. CASTELLANO: Your Honor, at this time
4 I move the admission of 434.

5 THE COURT: Any objection from the
6 defendants?

7 MR. VILLA: No, Your Honor.

8 THE COURT: All right. Government's
9 Exhibit 434 will be admitted into evidence.

10 (Government Exhibit 434 admitted.)

11 BY MR. CASTELLANO

12 Q. Okay. Mr. Martinez, I'm going to draw
13 your attention to Bates stamp number 8988 of that
14 exhibit. Are you able to see that on your screen,
15 sir?

16 A. Yes.

17 Q. Okay. So when were you convicted of that
18 crime?

19 A. When?

20 Q. Yes.

21 A. In 2001.

22 Q. And when did the actual shooting take
23 place?

24 A. In 1998.

25 Q. How long did it take, after you shot the

1 police officer, before you were arrested and charged
2 with that crime?

3 A. About three years.

4 Q. About three years?

5 A. Yeah.

6 Q. How was it eventually solved?

7 MR. LOWRY: Objection, foundation.

8 THE COURT: Well, if he knows.

9 Why don't you lay some foundation as to
10 how he knows?

11 BY MR. CASTELLANO

12 Q. Sure. Do you know how you were caught
13 eventually for that crime?

14 A. Yes. They said that I was the last person
15 to be seen with her.

16 Q. Okay.

17 A. That's what they told me.

18 Q. And just for clarification, when you shot
19 this police officer, was that an SNM hit?

20 A. No.

21 Q. Now, the conduct leading up to it, the
22 drug-dealing and the firearms -- was that SNM
23 activity?

24 A. Yes.

25 Q. Okay. I want to turn your attention to

1 another page in that exhibit. It's Bates stamped
2 8985. When you killed the police officer -- what
3 was her name?

4 A. Cheryl.

5 Q. And you were convicted of first-degree
6 murder?

7 A. Yes.

8 Q. I'm showing you now a judgment, sentence,
9 and commitment filed June 24, 2002. What is that
10 conviction for?

11 A. It's for killing Matthew Cavalier.

12 Q. And was that a conviction for
13 second-degree murder?

14 A. Yes.

15 Q. Now, earlier you told us about somebody
16 named Matthew Cavalier. Is this the same Matthew
17 Cavalier?

18 A. Yes.

19 Q. Was he somebody you previously got along
20 with?

21 A. Yes.

22 Q. How is it you find yourself killing
23 somebody who actually previously protected you and
24 befriended you? How did that happen?

25 A. Because he had ratted on a murder that

1 happened in '96, with Victor Herrera.

2 Q. And is Victor Herrera the same Sick Vic
3 you mentioned earlier?

4 A. Yes, the one that stabbed me, yes.

5 Q. So where are you at the time that this
6 murder happens?

7 A. Which murder?

8 Q. Matthew Cavalier.

9 A. BCDC.

10 Q. And why were you in BCDC?

11 A. Awaiting trial for the first-degree -- the
12 other murder, the cop murder.

13 Q. So you're in BCDC, the Bernalillo County
14 Detention Center?

15 A. Yes.

16 Q. So you find yourself in jail pending
17 charges for the previous murder. And how is it that
18 you find yourself next to Matthew Cavalier?

19 A. He just drove up one day, and came in, and
20 they just put him next to -- I just was in
21 disbelief, because they already knew he was a
22 marked -- he knew he was marked, because he ratted.
23 So I was surprised that he even just came into that
24 pod knowing that he was going to get killed.

25 Q. In other words, knowing he was marked --

1 he didn't PC?

2 A. He didn't PC.

3 Q. And what discussion do you have with
4 others about the fact that he's now living with you?

5 A. Well, I go rap to Styx. Immediately we
6 had a meeting right away, because it was just four
7 of us in there. It was me, Styx, Rabbit, and Paco.

8 Q. Let me stop you there. Is Styx also known
9 as Gerald Archuleta?

10 A. Yes.

11 Q. And was he in the facility with you at
12 that time?

13 A. Yes.

14 Q. And who was Rabbit?

15 A. Samuel Silva.

16 Q. Do you know Paco's name?

17 A. Francisco Villalobos.

18 Q. And are you living in the same pod or
19 living area at that time?

20 A. Yes, we're all living together. There was
21 other -- two other SNM members at the time in there,
22 too: Fuzz -- I don't remember his name -- Kelly
23 Mercer were also living in there, but they weren't
24 part of that meeting.

25 Q. Tell us what happens when you meet with

1 Styx and the others?

2 A. Well, we just all agree, we pretty much
3 said: "He has to go, we have to kill him."

4 Q. Why did he have to go?

5 A. Because there was paperwork on him.

6 Q. And what problem did that create in terms
7 of being an SNM Gang member?

8 A. Excuse me?

9 Q. What problems did that create for being an
10 SNM Gang member?

11 A. Well, once you rat, you become -- that's
12 it. You're dead, pretty much.

13 Q. Is that part of the rules of the gang?

14 A. Yes.

15 Q. And are you required to enforce those
16 rules?

17 A. Yes.

18 Q. So what happens?

19 A. Once he drove up there, we were obligated.
20 There was -- or else we would all answer to it
21 later, if we didn't take care of him. If they found
22 out later that he was living with us, and we had a
23 chance to hit him, and we didn't, later on we would
24 all have to answer to that in one way or another.

25 Q. What happens to Matthew Cavalier?

1 A. For count, I made a ligature -- and we all
2 agreed how it was going to happen. We talked -- me,
3 Paco, and Silva had talked about how we were going
4 to kill him. And so for count, it was going to be
5 after count, after chow, when -- you know, when
6 everything is calm, you know, when everything is
7 done; the COs are out of the pod, and everything
8 like that. And the signal was that Rabs was going
9 to hold him. Paco would hold his feet. And I would
10 strangle him. And the reason why Rabs was --
11 because he was bigger, stronger, and there was no
12 way Mosco would get out of that.

13 So after chow, that's exactly what
14 happened. And the signal was: When I throw out --
15 we're going to smoke a cigarette together. You guys
16 go in there first, I'll go in last, because that way
17 he don't get paranoid. I went in last, I closed the
18 door. As soon as I took a toke, I threw the
19 cigarette in the toilet. That was my sign for --
20 when I do that, that's when Silva is to hold him.
21 And I take off the belt, and that was the ligature,
22 and I jumped on top of him and started strangling
23 him.

24 Q. And does he know it's you who is
25 strangling him?

1 A. Yes. He told me, "Don't do it, Roy."

2 Q. And is he looking at you when this
3 happens? Or how are you strangling him?

4 A. What's that?

5 Q. Is he looking at you? Are you behind him?
6 How are you positioned?

7 A. When I took off the belt, and I turned
8 around, and he was in a bear hug, yeah, he looked at
9 me. That's when he told me, "Don't do it."

10 Q. What did you do?

11 A. I just blocked that out of my mind. You
12 know, I just had no choice.

13 Q. Why did you have to block it out?

14 A. Because he was my friend, you know. He
15 was somebody that, you know, looked out for me in
16 the past; had came and warned me that they were
17 going to hit me, and tried to get me to PC so I
18 don't get killed.

19 Q. Okay. So what happens to him?

20 A. I get on top of him and start strangling
21 him, and put my knee on the back of his head, till
22 it's broke.

23 Q. And did he die?

24 A. Yes.

25 Q. We looked at the judgment here a second

1 ago. So you were convicted of that offense?

2 A. Yes.

3 Q. And how was it that you were charged and
4 convicted? Was this discovered right away or was it
5 discovered later on?

6 A. Yeah, it was -- well, the body wasn't
7 discovered until 24 hours later. He laid in there.
8 The COs didn't know. They thought he was asleep.

9 But then, under investigation, they pulled
10 Kelly Mercer out, and he told right away what
11 happened.

12 And they had pictures of my hands, which
13 were swollen with ligature marks on them.

14 Q. How did you find out that Kelly Mercer had
15 told?

16 A. When they indicted all of us, they put us
17 all in the same pod together. And they had bugged
18 our cells. They were listening to us. Kelly Mercer
19 was one of the first ones to go to the interview and
20 never came back.

21 Q. Whatever happened to Kelly Mercer?

22 A. I have no idea. There was actually four
23 people that were in the unit or something that had
24 cooperated.

25 Q. And who eventually was convicted of this

1 murder?

2 A. I was.

3 Q. Anyone else?

4 A. Gerald Archuleta and Paco. Samuel Silva
5 was the only one that didn't.

6 Q. And I take it Samuel Silva wasn't
7 convicted because you guys didn't rat on him and say
8 he was involved?

9 A. Well, what happened was, we were going to
10 go to trial -- we were scheduled to go to trial, and
11 like a day before, or something, I called my lawyer,
12 and I said, "I can't take him down with me. They
13 want me. And I'll take a plea right now, if they
14 drop his charges."

15 And that's how it went down. The DA was
16 quick to do a conviction; didn't care about Mosco or
17 any of us, really. He just wanted to get it over
18 with.

19 I signed a plea. He said, "Hey, just
20 confess to the judge, and we'll drop the charges on
21 Silva, and that will be that." And that's how it
22 went down.

23 Q. So his charges were dismissed?

24 A. His charges were dismissed, and I pled
25 guilty on the same day. And family members were

1 pretty upset for that reason, you know, because we
2 did that.

3 Q. Because he wasn't held responsible for the
4 murder?

5 A. Exactly. And that he was going to be let
6 out eventually to the streets again. And they were
7 scared.

8 Q. I want to take you back to 1998, back in
9 time now. Were you involved with an arson at the
10 prison?

11 A. Yes.

12 Q. How did that happen?

13 A. It actually happened in '97, I think. I
14 lit a fire in the vent, in the Main penitentiary.

15 Q. Why did you do that?

16 A. Because they didn't bring me my property.
17 They were messing around with me, the COs. I was a
18 young kid. I was really impatient. Back then it
19 was just a jungle. The cops were really -- you
20 know, there is no respect.

21 Q. When you say "cops," are you referring to
22 the correction officers?

23 A. Yes, the COs.

24 Q. Did someone get hurt, or almost get hurt
25 as a result of this arson?

1 A. Yes. I didn't know, but somebody had --
2 one of the PPS officers was working on the toilet at
3 the far end of the corridor, or whatever you call
4 that, pie chase. And when the fire started, I guess
5 it was so bad, so much, that it blew up a hole in
6 the vents and caught fire to the insulation, and he
7 got smoked out, and he passed out.

8 Q. Did he survive?

9 A. Yes.

10 Q. And what was the corrections officers'
11 response to your arson?

12 A. They beat me up. On the way to the
13 shower, they came -- they got me out of the shower.
14 The Major actually stopped it, but they were beating
15 me. They cut my eye open.

16 Q. And did you report that to the
17 authorities?

18 A. No.

19 Q. Were any of the corrections officers
20 prosecuted as a result?

21 A. No.

22 Q. Why not get the corrections officers in
23 trouble by --

24 A. I just was just told not to say nothing
25 and we'll handle it ourselves.

1 Q. I'm going to ask you about somebody named
2 Javier Molina. Are you familiar with that name?

3 A. Yes.

4 Q. And sometime around 2013, 2014, did you
5 receive any paperwork related to Javier Molina?

6 A. Yes.

7 Q. What did you receive?

8 A. It was like a bench warrant or something.
9 It was like a warrant, like two pages, three pages,
10 maybe.

11 Q. How did you receive those documents?

12 A. Legal mail. It was actually stacked with
13 some other paperwork, but it was miscellaneous. I
14 don't even know what.

15 Q. In which facility were you living during
16 that time?

17 A. The North, PNM North.

18 Q. That's the North facility in Santa Fe?

19 A. Yes.

20 Q. And what did you think when you received
21 the paperwork?

22 A. I just -- well, at first I didn't really
23 think anything of it until I recognized the name and
24 there was little highlights in it were underlined;
25 things were underlined. And it was something to the

1 effect that he got out of the car, and he was with
2 them earlier, you know, and this and that. I can't
3 really remember. But it was something to that
4 effect. It was real brief. It wasn't a big old
5 long thing.

6 Q. All right. And what did you think about
7 reading that information?

8 A. I actually didn't really think nothing at
9 the time. You know, I was really -- it wasn't much
10 of anything.

11 Q. And what did you do with that paperwork?

12 A. I stashed it in my other paperwork, my own
13 stuff.

14 Q. Why did you do that?

15 A. Just in case the COs come and shake down.

16 One thing I learned from the history, is
17 when I -- after I killed Mosco, we had paperwork on
18 other rats, people that were telling, and I didn't
19 want to get caught with that paperwork, because
20 people that testified or were going to testify in
21 Mosco's case -- we had that paperwork. And I didn't
22 want to have it in my room, because they were going
23 to try to kill those dudes. So I didn't want them
24 to link me to any of those murders, if they
25 happened.

1 Q. So in other words, if you have
2 cooperators' information in your cell, and that
3 cooperator dies --

4 A. Yes.

5 Q. -- you can get potentially tied to that?

6 A. Yes.

7 Q. And why stash it in your legal paperwork
8 as opposed to other places?

9 A. Because the COs can't look through your
10 stuff. They can skim through it, but they can't
11 read it. They can't look at names or anything like
12 that. But if they find somebody else's names, other
13 people's paperwork, you can get charged -- written
14 up, or whatever.

15 Q. When you say "charged," is that an
16 administrative process?

17 A. Yeah. Administration. They did write you
18 up for that.

19 Q. Did you mention the paperwork to anybody?

20 A. No, not right away. Like I said, I didn't
21 think it was really nothing.

22 Q. And so as a result, did you order
23 anything? Did you do anything else with that
24 paperwork?

25 A. No.

1 Q. And had you met Javier Molina before?

2 A. Yes.

3 Q. Where had you met him?

4 A. When I was in Southern, when I was in
5 Cruces with him, in the unit.

6 Q. When was that?

7 A. In 2012, 2013, those two years.

8 Q. Did you have any problems with him?

9 A. No, none.

10 Q. And how did you find yourself at Southern,
11 and then shortly after that back at the North?

12 A. Well, they locked up Pup, and then,
13 shortly after they locked him up, they caught
14 somebody sharpening a shank, in another pod, and as
15 a result of that, they shook down, and they found
16 shanks in my cell, Crazo's cell. A few of us got
17 locked up for that.

18 Q. Why did you have shanks?

19 A. Just because they had told us we were
20 going to be going to the line; that there is a
21 possibility that we'd be going to the line. And we
22 had enemies out there. So we were getting prepared.
23 Just in case they told us we're going to the line,
24 we were packing.

25 Q. At this point, is this -- are you only

1 housed with SNM?

2 A. Yes.

3 Q. And going to the line -- does that mean
4 you would be in general population with other
5 inmates?

6 A. Yes, because we were in Level 4 at the
7 time.

8 Q. And you knew then that you would probably
9 run into enemies?

10 A. Yes.

11 Q. You mentioned Pup. Who is Pup?

12 A. Anthony Baca.

13 Q. I know you don't have your glasses today,
14 but are you able to see him in the courtroom?

15 A. No. I can't really -- I don't know which
16 one he is. I can't see. I need glasses bad.

17 Q. That's all right. How did you know Pup,
18 or Anthony Baca?

19 A. Just doing time. I met him in 1995, when
20 I was a young kid. But it was like real brief. It
21 wasn't much of anything.

22 Q. And who was he to you in 1995?

23 A. Just another carnal.

24 Q. At that point, did you know whether he
25 held any type of leadership responsibility or

1 anything like that?

2 A. No, but I just knew he was old-time, he
3 was older. Just respected older people, that had
4 been around longer.

5 Q. What about your time with him at Southern?

6 A. I got to know him there more when -- there
7 was some problems, I guess, that was happening
8 before I had got there with him, concerning him, and
9 BB and Gumby and all these other guys. I really
10 didn't know too much about that stuff. They were
11 just -- something happened I guess. But when I
12 talked to him, I got along.

13 MR. LOWRY: Objection, Your Honor. We
14 need some questions and answers.

15 THE COURT: All right. A little more Q
16 and A.

17 MR. CASTELLANO: Sure, Your Honor.
18 BY MR. CASTELLANO

19 Q. Tell us about your conversation with
20 Anthony Baca.

21 A. Just had a regular conversation about how
22 things should be run with the SNM.

23 Q. Did he have ideas about the way it should
24 be run and the structure of the organization?

25 A. Yes.

1 Q. And who was Pup now when you were housed
2 with him at Southern? What kind of responsibility
3 did he have, or role?

4 A. Well, he was known as a leader that, you
5 know, earned his way.

6 Q. And so what were some of the ideas he
7 shared with you?

8 A. Well, he wanted to -- he wanted more
9 discipline, more structure, more, like, people to,
10 you know, get in line, do things -- you know, have
11 respect for each other, things like that.

12 MS. JACKS: Excuse me, Your Honor. Are
13 these statements limited?

14 THE COURT: I think they are.

15 These statements that are being testified
16 about that Mr. Baca made are limited just to him.
17 And you cannot use them in your consideration
18 against the charges against any of the other
19 defendants.

20 Mr. Castellano.

21 BY MR. CASTELLANO

22 Q. How did you feel about his ideas?

23 A. I liked them. You know, I agreed we
24 should have more structure and more discipline,
25 things like that.

1 Q. Why did that seem like a good idea about
2 this timeframe?

3 A. Well, because it was -- there was a lot of
4 youngsters. There was a lot of disrespect. I mean,
5 for the most part, we were -- if something went
6 down, we would all stick together. But yeah, there
7 needed to be more discipline and more structure at
8 the time. So that's what we were talking about
9 mostly.

10 Q. And are you familiar with the term
11 "tabla"?

12 A. Yes.

13 Q. What's a tabla?

14 A. It's a table, a panel of leaders, more
15 than one.

16 Q. And when you were at the Southern New
17 Mexico Correctional Facility was there a tabla in
18 place?

19 A. What happened is, we had a vote between
20 the pods in the unit. So there were certain names
21 that were there. My name was on there, BB's name,
22 Carlos. Pup was the main one that was to be above
23 all. So we voted. There was a vote on it at the
24 time and the only pod that wasn't united in that was
25 blue pod.

1 Q. What was the issue with blue pod?

2 A. I guess they just -- people in there
3 didn't agree with Pup being at the top.

4 Q. If you recall at this point, do you
5 remember who was in blue pod at that point?

6 A. JR, Stoner, Dan Dan. Those are the only
7 ones I really knew at the time. Oh, Drama, Javier
8 Molina, and they were there, that I could remember.

9 Q. You mentioned the name Carlos. Carlos
10 who? Which Carlos is this that you referred to?

11 A. Lazy.

12 Q. Do you know his last name?

13 A. Herrera.

14 Q. As a result of this vote, did he end up on
15 the tabla?

16 A. Yes.

17 Q. What responsibilities did you have then as
18 members of the tabla?

19 A. To keep people in line and start, you
20 know, building, building up, discipline; you know,
21 working out, doing things like that.

22 Q. And in terms of discipline, what were your
23 responsibilities if paperwork came in on somebody?

24 A. Well, that was to be handled immediately.
25 If there was paperwork on somebody, they were to get

1 killed.

2 Q. And as members of the tabla, what would
3 happen if you didn't follow through with the
4 responsibilities?

5 A. Then we'd be dealt with.

6 Q. Now, you told the jury earlier that you
7 had paperwork, some sort of paperwork on Javier
8 Molina once you eventually get back to the North
9 from Southern?

10 A. Yeah, that was after.

11 Q. You told us about being in Southern,
12 you're on the tabla; then you get sent back to the
13 North.

14 A. Um-hum.

15 Q. And you receive the paperwork?

16 A. Um-hum.

17 Q. What eventually happens to the paperwork
18 that you had?

19 A. Well, when Javier got killed, I told Slim,
20 a Sureno at the time -- I don't know his name; he
21 was my neighbor. I gave it to him and told him to
22 just hold it, because they're probably going to
23 shake us down. I didn't know they were going to do
24 what they did. They just went all-out. But I told
25 him, "Hold it until after they're done shaking down,

1 and then I'll get it back from you."

2 But that never happened. They moved me
3 and pretty much shut us down.

4 Q. So what happened to your copy of the
5 paperwork?

6 A. It went with that Sureno, whatever he did
7 with it.

8 Q. And if you know, were the Surenos also
9 shaken down, or just the SNM?

10 A. It was just SNM. When that happened, they
11 went and targeted all SNM members and rounded us all
12 up, all state wide, and it was pretty massive.

13 Q. At some point did you ever see or hear
14 about paperwork on Jerry Montoya?

15 A. Yes.

16 Q. And did you have a conversation about it?

17 A. Yeah, he said it was fake and that it
18 wasn't real and stuff like that.

19 Q. Where was this conversation, and when?

20 A. When we were in Southern. He would go
21 to -- my window was right there by the yard, so I
22 would be able to talk to them whenever they go to
23 the yard, the other units.

24 Q. Do you remember what year that was?

25 A. 2012, 2013. All I did was talk to him

1 about it. He didn't show me nothing. I just asked
2 him about it. He said that it was just made up; it
3 wasn't real, and that Pup agreed that it was all
4 good and left it alone.

5 Q. Did you have any discussions with Pup
6 about it?

7 A. Not really, no. Not about that.

8 Q. Was there ever any indication that BB had
9 the paperwork?

10 A. Yes, Pup had came to -- well, after we got
11 locked down, I got locked down for a shank, and Pup
12 was already in lockup. And I called him out for a
13 legal rep. When they charged me, they gave me a
14 report. So I called Pup out for a legal rep. And
15 that's when me and him talked about --

16 MS. JACKS: Objection, Your Honor. This
17 appears to be calling for hearsay.

18 MR. CASTELLANO: It's a statement by a
19 party opponent, Your Honor.

20 THE COURT: Yeah, just calling Pup for a
21 legal rep, I'm not sure there is any truth to that.
22 Overruled.

23 MS. JACKS: I think he was going to get
24 into what Mr. Baca allegedly said.

25 THE COURT: He didn't get to it yet. So

1 are you going to solicit this out-of-court
2 statement?

3 MR. CASTELLANO: Yes, Your Honor.

4 THE COURT: What's the exception for it?

5 MR. CASTELLANO: It's a statement by a
6 party opponent, if it's Mr. Baca.

7 THE COURT: All right. Well, then the
8 comments can be used against Mr. Baca, but not the
9 other three defendants.

10 MR. CASTELLANO: I understand, Your Honor.

11 BY MR. CASTELLANO:

12 Q. So let me back up for a second. I want
13 you to explain this process to the jury. You get
14 caught with a shank?

15 A. Yes.

16 Q. And is there an administrative process for
17 that?

18 A. Yes. It's like a -- when you get a
19 report, you have a right to call for a legal rep,
20 somebody to represent you that's probably smarter.
21 And they call you out to have that legal meeting.
22 That's what it's called, a legal meeting, with that
23 person, and then so that we could go to prepare for
24 a hearing, just like court, kind of, and that's what
25 that is.

1 Q. So is this like having a trial in the
2 prison?

3 A. Yes.

4 Q. And you can have another inmate represent
5 you or help you?

6 A. Yes.

7 Q. And at this point, did you select Mr.
8 Baca?

9 A. Yes.

10 Q. So tell us about this conversation you had
11 with them during the legal meeting.

12 A. We talked a little bit about me getting
13 busted with the shank, and then the rest was why he
14 got locked up. He showed me his paperwork, why he
15 got locked up, and that he was real pissed off at
16 the reasons why he was taken out of Level 4.

17 And so once we got in that conversation,
18 he started talking about how he -- who he had
19 thought that was responsible for him getting locked
20 up, and what he wanted done.

21 Q. Now, when you say "locked up," did he get
22 removed from the pod?

23 A. Yes, he was kited out, they call it. It's
24 where there was like three different kites, from
25 what I remember, three different reasons why he got

1 locked up.

2 Q. All right. So what did he tell you about
3 getting kited out and his feelings about it?

4 A. He thought it was -- he assumed it was
5 Dan Dan, Javier, and Drama, between them three, that
6 had -- they had something to do with him being
7 locked up.

8 Q. Do you know Drama's name?

9 A. No.

10 Q. When you say "Javier," are you referring
11 to Javier Molina?

12 A. Yes. They all lived in blue pod with him.
13 And he assumed that it came from blue pod. That's
14 why he got locked up.

15 Q. And as a result of Mr. Baca getting kited
16 out, where did he eventually end up?

17 A. In the hole with me. Well, he was
18 actually there before I got there. I got there like
19 a week later, in segregation, where we were at.

20 Q. And were you in segregation because of the
21 shank?

22 A. Yes.

23 Q. After the Javier Molina murder happened,
24 did you get a chance to talk to other SNM members
25 about that murder?

1 A. No. You're talking about after the
2 murder?

3 Q. Correct.

4 A. After the murder, yeah, there was talk, I
5 mean, but we kind of were quiet because of the way
6 they had us shut down, we were pretty much like --
7 we couldn't really talk to nobody, like, about
8 things, because we didn't know what was going on at
9 the time for a while.

10 Q. Now, after the murder took place, were you
11 housed at some point with Mario Rodriguez?

12 A. He was actually in the next pod. I mean,
13 eventually we were together. But at the very
14 beginning of the stages, when the murder first
15 happened, they put him in the next pod, and I would
16 see him in the yard.

17 Q. Now, when you're housed with him, which
18 facility is this?

19 A. The North, PNM North.

20 Q. After the murder, was Mario Rodriguez
21 moved from the Southern to the North facility?

22 A. Yes.

23 Q. And did he talk to you? I don't need to
24 know what he told you at this point, but did he talk
25 to you about the murder and how it went down?

1 A. No, he never really talked to me about the
2 murder. He would just -- the only thing he had ever
3 said was --

4 MS. JACKS: Objection, hearsay.

5 THE COURT: We're still -- well, how do
6 you link this?

7 MR. CASTELLANO: I agree that's hearsay,
8 Your Honor. I'm not trying to elicit that.

9 THE COURT: All right.

10 BY MR. CASTELLANO

11 Q. Did Mario Rodriguez express to you that he
12 was upset with anybody following the Molina murder?

13 A. Yes.

14 Q. With whom was he upset?

15 MS. JACKS: Objection, hearsay.

16 THE COURT: Sustained.

17 BY MR. CASTELLANO

18 Q. As a result of this conversation, did you
19 agree to put a hit on anybody?

20 A. Yes.

21 Q. And who was that?

22 A. Robert --

23 MS. JACKS: Objection, based on hearsay.

24 THE COURT: Well, this is a decision he
25 made. However he made it is not important. He made

1 a decision. Overruled.

2 BY MR. CASTELLANO:

3 Q. Who did you agree should be hit as a
4 result of the Molina murder?

5 A. Ron Ron, Ronald.

6 Q. Who is Ron Ron?

7 A. That's Dan Dan's brother.

8 Q. Is his name Ronald Sanchez?

9 A. Yes.

10 Q. Why was there an agreement to hit Ronald
11 Sanchez?

12 A. Because Dan Dan was out of state, and
13 couldn't -- couldn't get him.

14 Q. And did you agree that Ronald Sanchez
15 should be hit in Daniel Sanchez' place for something
16 that happened related to the Molina murder?

17 A. Yes.

18 Q. And who was part of that agreement? I
19 don't need to know what they said. I just want to
20 know who was part of that agreement.

21 A. Baby Rob, myself; I think Spider. I'm not
22 too sure who else. I think there was a few of us
23 that were in the yard that day and came to an
24 agreement on that.

25 Q. And is this Spider, David Calbert?

1 A. Yes.

2 Q. Now, before the Molina murder, did you
3 ever have a conversation with Anthony Baca about
4 Mr. Molina getting killed or the fact that he should
5 be killed?

6 A. The only conversation we had was in 2013
7 in the yard, when he mentioned BB might have the
8 paperwork, and that he was holding out, and that --
9 for me to ask him and try to get that out of him,
10 and that needed to be done, that needed to be taken
11 care of immediately, is the way he put it.

12 Q. Who was BB?

13 A. Javier Rubio.

14 Q. What did you understand Mr. Baca to mean
15 when he said that needed to be taken care of
16 immediately?

17 MR. LOWRY: Objection, calls for
18 speculation.

19 THE COURT: It's his understanding.
20 Overruled.

21 A. Do I answer that?

22 BY MR. CASTELLANO:

23 Q. Yes.

24 A. He wanted him to be taken care of, killed.

25 Q. And who is "he"?

1 A. Javier Molina and BB at the time. If BB
2 was holding out on the paperwork, then BB should be
3 hit, too. Because we come to believe that BB had
4 the paperwork.

5 MR. LOWRY: Objection. There is not even
6 a pending question.

7 THE COURT: Overruled.

8 BY MR. CASTELLANO:

9 Q. And who was BB at the facility? What was
10 his responsibility?

11 A. He was part of the tabla, the table. He
12 was a leader.

13 Q. So a leader who may have paperwork or is
14 keeping it from others -- does that create a
15 problem?

16 A. Yes.

17 Q. Why?

18 A. Well, because if he's holding out on that,
19 he's just as guilty as the guy that he's protecting.

20 Q. Okay. Now, you mentioned that following
21 the Molina murder, that you said there was a big
22 response by the Corrections Department?

23 A. Yes.

24 Q. What did the Corrections Department do to
25 all SNM Gang members?

1 A. Stripped us, took all our stuff away; put
2 us in strip cells; left us there for, like, three
3 days like that, nothing but a mattress.

4 Q. How did you feel about that?

5 A. I was angry, pissed off, because I had
6 nothing to do with that murder, and the way they
7 were treating us.

8 Q. Did you feel that you were being held
9 accountable for something you didn't do?

10 A. Yes.

11 Q. Did that seem fair to you?

12 A. No.

13 Q. And for getting locked down like that, did
14 you expect that there should be some sort of process
15 through the prison?

16 A. Yes. We're used to -- the way the policy
17 states is that we're supposed to be -- we have a
18 process that we go through, that if they're going to
19 take our property, they've got to take us to a
20 hearing first. And they didn't do that.

21 THE COURT: Mr. Castellano, would this be
22 a good time for us to take our morning break?

23 MR. CASTELLANO: Yes, Your Honor.

24 THE COURT: All right. We'll be in recess
25 for about 15 minutes. All rise.

1 (The jury left the courtroom.)

2 THE COURT: All right. We'll be in recess
3 for about 15 minutes.

4 (The Court stood in recess.)

5 THE COURT: All rise.

6 (The jury entered the courtroom.)

7 THE COURT: I meant to mention this
8 morning that Ms. Fox-Young's baby is still running a
9 fever, so she's going to be with him this morning.
10 She may come in this afternoon. But that's where
11 she is.

12 All right. Mr. Martinez, I'll remind you
13 that you're still under oath.

14 Mr. Castellano, if you wish to continue
15 your direct examination of Mr. Martinez, you may do
16 so at this time.

17 MR. CASTELLANO: Yes, sir, thank you.

18 THE COURT: Mr. Castellano.

19 BY MR. CASTELLANO:

20 Q. Mr. Martinez, I want to take you back to
21 2013, and ask you if you also have a conviction for
22 possession of a deadly weapon or explosive by a
23 prisoner.

24 A. Yes.

25 Q. And how did that come about?

1 A. It was during that shakedown that I spoke
2 of earlier, when me and Crazo and a few of us got
3 locked up for -- they found shanks in our cell.
4 They found a weapon in my cell.

5 Q. And is this the same incident that you met
6 with Mr. Baca?

7 A. Yes.

8 Q. And so when you met with him, was that
9 part of the administrative process of the prison and
10 not part of a criminal case?

11 A. Right -- it was both -- I mean, I got
12 charged on the streets, but they also do their
13 administration thing, so I got charged both with --
14 on the street charges and in prison.

15 Q. So as a result of the prison proceedings,
16 what was the consequence to you there?

17 A. I got found guilty, and they gave me some
18 disciplinary time.

19 Q. And when things like that happen, does
20 that also result in the loss of good time?

21 A. Yes.

22 Q. And then, in addition to what happened in
23 prison, then were you prosecuted here in Las Cruces
24 in state court?

25 A. Right.

1 Q. Do you remember how much time you got for
2 that?

3 A. I got eight and a half years suspended,
4 and got six months as part of a plea. I took a
5 plea, something to that effect.

6 Q. Why did you agree to cooperate in this
7 case?

8 A. December 3, around there, the first week
9 of December.

10 Q. And why did you agree to do so?

11 A. Because I was already tired of being --
12 living that life, and just wanted to do the right
13 thing.

14 Q. Now, when you agreed to cooperate, did the
15 FBI sign you up as a confidential human source or a
16 confidential informant?

17 A. Yes.

18 Q. As a result of getting signed up as a
19 confidential human source, did you receive money
20 from the FBI?

21 A. Yes.

22 Q. And do you remember if the total amounted
23 to \$1,350?

24 A. Right.

25 Q. At some point did you lose the ability to

1 work as a confidential informant for any kind of
2 misconduct?

3 A. Yes.

4 Q. What was the misconduct?

5 A. They found pills in my mattress.

6 Q. What kind of pills were they?

7 A. The medication I take. I just had stored
8 them up, and there was more than what I should have
9 had.

10 Q. And did you also receive a tablet for
11 reviewing discovery in this case?

12 A. Yes.

13 Q. What happened to that tablet?

14 A. I broke into it.

15 Q. And when you broke into it, did you figure
16 out a way to reset the tablet?

17 A. Yes.

18 Q. What was the tablet able to do once you
19 reset it?

20 A. Well, it erased all my discovery, for one.
21 And then it reset it back to the original,
22 whatever -- the Windows 10, I think it was, and
23 allowed it to -- all the features to work on the
24 tablet; and that's on the tablet.

25 Q. And where were you when you first reset

1 the tablet?

2 A. I was at PNM North.

3 Q. And eventually at PNM North were you able
4 to access the internet or the Wi-Fi capabilities?

5 A. No. At the time I was the only one that
6 had my tablet like that. I didn't know much about
7 Wi-Fi. I didn't know what that was. Kreaper is the
8 one that kind of told me about it, because he's the
9 only one that knew about the thing, because we had
10 an SD card, and that's how it started, breaking into
11 the tablet.

12 Q. Is Kreaper also known as Jerry Armenta?

13 A. Yes.

14 Q. And eventually did you leave that facility
15 and arrive at the Sandoval County Detention Center?

16 A. Yes.

17 Q. Once at the detention center, did you
18 learn that you could access the internet by using
19 the tablet?

20 A. Yes. By that time, almost everybody that
21 was living in that pod had -- I did their tablet,
22 too. And Kreaper was the first one to get a Wi-Fi
23 connection.

24 Q. Did you say that you helped the others
25 reset their tablets?

1 A. Yes, I helped Playboy, Kreaper, Ben Clark,
2 like that, people like that. Some didn't get theirs
3 right away. I just did it to a few.

4 Q. And then what did you do with your tablet
5 once you had access to the internet?

6 A. Well, I would lend it. Because the cell
7 that I lived in, I couldn't get it. So I would give
8 it to Kreaper, and Kreaper would look up stuff for
9 me, like porn and all that, and put it on there for
10 me, and I would get it back; till they moved me into
11 a cell where I could get it.

12 Q. Okay. So what did you eventually do with
13 your tablet? You mentioned pornography?

14 A. Um-hum.

15 Q. What else?

16 A. Facebook, Gmail, video games. That's it.

17 Q. And once it was discovered that you had
18 tampered with the tablet, did you get the tablet
19 back?

20 A. No. They took it from me. I haven't had
21 it since.

22 Q. About when was that?

23 A. It was last year. I can't remember
24 exactly when.

25 Q. Did you say it was the beginning, middle,

1 or end of last year?

2 A. About the middle.

3 Q. Can you tell the members of the jury
4 whether, after you pled guilty and agreed to
5 cooperate, you used any controlled substances?

6 A. Yes, I used Suboxones.

7 Q. Did you use anything else?

8 A. No.

9 Q. And about -- where were you when you used
10 Suboxone?

11 A. Sandoval, Lea County. That's about it.
12 Them two places.

13 Q. Do you use any other drugs?

14 A. No.

15 Q. Why not?

16 A. I stopped using in 2001, because I started
17 reading the Bible and things like that. I stopped
18 doing everything. And in 2008, I got real bad
19 hepatitis C, so I took the treatment. And after
20 that, I just made sure never to -- I mean, I hadn't
21 been doing it since 2001, but at that time when I
22 got that treatment, I didn't get tattoos. I won't
23 use needles or nothing.

24 Q. All right. In a prison facility, what's
25 the problem with getting tattoos or using needles?

1 A. Getting hepatitis C.

2 Q. So since that time, have you used any
3 other drugs, other than Suboxone?

4 A. No, I haven't.

5 Q. Now, in addition, as part of your
6 cooperation, did you agree to assist Agent Acee in
7 providing gang training to law enforcement officers?

8 A. Yes.

9 Q. And you also agreed to participate in
10 anti-gang programming for youth offenders?

11 A. Yes.

12 Q. Also as part of your cooperation, were you
13 provided a contact visit with your daughter?

14 A. Yes.

15 Q. And at some point were you involved with,
16 I guess I'll call it, a celebration? It was a pizza
17 party with other cooperators?

18 A. Yes.

19 Q. And who was there?

20 A. Bryan, Mark Myers, all the cooperators. I
21 can't remember who else. Oh, Nancy was there.

22 Q. Is that Nancy Stemo?

23 A. Yes.

24 Q. When you say "Bryan," is that Agent Bryan
25 Acee?

1 A. Yes.

2 Q. Also as part of any benefits you received,
3 were you -- did you participate in philosophy
4 classes?

5 A. Yes.

6 Q. What was the purpose of them providing
7 philosophy classes for you?

8 A. To learn how to speak and just to be
9 educated.

10 Q. What about changing your way of thinking?

11 A. Yeah, changing -- like to get our heads
12 to -- on the right path, to be -- to stop thinking
13 the way we used to think, you know; to train us how
14 to think different.

15 Q. All right. I want to take you back now to
16 before the break. You were telling the jury that
17 you guys got locked down; you didn't think it was
18 fair. What did you do as a result of being upset
19 about this?

20 A. I filed a lawsuit. I started doing a
21 paper trail, is what it's called. I filed
22 grievances, things like that, to give the State an
23 opportunity to correct itself, because it had
24 violated its own policies.

25 Q. All right. What happened as a result of

1 starting that process?

2 A. Derek Williams, the deputy warden at the
3 time, answered one of them, which he wasn't supposed
4 to answer the way he did, but he did. And it helped
5 me in my lawsuit. He had answered, saying that the
6 SNM is involved in a murder, something to the effect
7 that we're on restriction, which is illegal in the
8 state policies, that they weren't to restrict us
9 over a murder. They can do an investigation, but
10 they couldn't restrict us. And he worded it just
11 like that, "restricted us," that we're on
12 restriction. So based on that, I started filing --
13 educating myself on how to do a lawsuit.

14 Q. Now, when you said you learned to do a
15 lawsuit, did you hire an attorney, or did you do
16 this on your own?

17 A. I did it on my own.

18 Q. And what happened with your lawsuit?

19 A. I ended up getting it. I filed for a
20 dismissal based on my cooperation, that I was
21 cooperating, and the victim that I had was Gregg
22 Marcantel. So he's the one that I was filing the
23 lawsuit against, so I decided not to drop it.

24 Q. At some point as a result of being upset
25 about the lockdown, did you form a plan or agree

1 with others to kill Mr. Marcantel and
2 Mr. Santistevan?

3 A. Yes.

4 Q. Okay. Who was Gregg Marcantel?

5 A. He's the Secretary of Corrections.

6 Q. And who is Dwayne Santistevan?

7 A. He was head of the STIU at the time, that
8 I understood.

9 Q. What was the problem that you had with
10 him?

11 A. I really didn't have a problem with him.
12 It's -- it started in 2013, when I had a
13 conversation with Pup, and that's when that
14 conversation started with me and Eric Duran. We're
15 out in the yard, and he was frustrated with Level 4.
16 He said that he wanted to turn the Level 4 upside
17 down; that -- because they locked him up, and he was
18 frustrated with the administration, because I guess
19 something to the effect that he was trying to get
20 out. He was writing letters and stuff to get out,
21 back to Level 4.

22 Q. This is Mr. Duran, or is it Mr. Baca?

23 A. Mr. Baca.

24 Q. Okay. Now, you said he started writing
25 letters?

1 A. To -- I guess, to Santistevan, to let him
2 out. And Santistevan told him, "No, you're not
3 getting out. You're gone."

4 He was pretty pissed off at that.

5 Q. So what discussions did you have back in
6 2013 about either Mr. Santistevan or Mr. Marcantel?

7 A. We didn't have a conversation about
8 Marcantel. He didn't mention Marcantel at all in
9 2013. He just said it would be easy to get
10 Santistevan's son, which was an LT at the time.
11 Santistevan's son was an LT, lieutenant, at the
12 Central New Mexico Corrections Facility, and he said
13 that he wanted to try to get him hit to make a
14 point.

15 Q. And is this Mr. Baca?

16 A. Yes.

17 Q. This is a conversation the two of you had?

18 A. Three of us: Me, him, and Crazo.

19 Q. And is Crazo Eric Duran?

20 A. Yes.

21 Q. So tell us more about this conversation.

22 A. That's about it. He just said that, and
23 he was frustrated with the Level 4, he was done
24 with -- he wanted to flip it upside down; that they
25 were just a bunch of informants, you know,

1 worthless, and he was really pissed off. He was
2 pissed off at the administration for not letting him
3 out, and how they're always locking him up, and it
4 was time; he wanted something done.

5 Q. And did you agree that something should be
6 done?

7 A. Yes.

8 Q. What happened as a result of this
9 agreement?

10 A. Me and Crazo pretty much agreed that we'll
11 get it done if we can.

12 Q. And you mentioned Dwayne Santistevan's
13 son. At this point, was it anybody in
14 administration, or how did you focus this agreement?

15 A. I just figured it was due to the gang
16 unit; that Santistevan -- that he was a target
17 because he was responsible for our movement, for
18 SNM. So that's who he was pissed off at.

19 MR. CASTELLANO: May I approach the
20 witness, Your Honor?

21 THE COURT: You may.

22 BY MR. CASTELLANO:

23 Q. Mr. Martinez, I'm going to show you what's
24 been marked for identification as 273, 274, and 275.
25 Go ahead and look at those, and tell us if you

1 recognize them.

2 A. Yeah, I recognize them.

3 Q. How do you recognize them?

4 A. It's my writing. It's what I said. These
5 are -- we called them -- we had a nickname for
6 these. We called them golden tickets.

7 Q. All right. Why did you call them that?

8 A. Because that was what was going to get
9 things done on the streets.

10 Q. And if you remember, approximately when
11 did you write those?

12 A. 2015, around the beginning of 2015, I
13 believe. I'm not too sure.

14 Q. And other than redactions of things like
15 address and phone numbers, does it appear to be a
16 photocopy of the letters that you wrote?

17 A. Yes.

18 MR. CASTELLANO: Your Honor, I'd move the
19 admission of Government's Exhibits 273, 274, and
20 275.

21 THE COURT: Any objection?

22 MR. LOWRY: No objection, Your Honor.

23 THE COURT: Not hearing any objection,
24 Government's Exhibits 273, 274, and 275 will be
25 admitted into evidence.

1 (Government Exhibits 273, 274, and 275
2 admitted.)

3 BY MR. CASTELLANO:

4 Q. Mr. Martinez, I know the writing is small
5 on one of those. I'm going to leave those copies
6 with you, if you need those. And I'm also going to
7 show you on the monitor Exhibit 273.

8 A. Okay.

9 Q. And we can actually make this writing
10 larger if it helps you. Does it help at all, or are
11 you able to see it on the screen?

12 A. I can see that.

13 Q. So if you can, I'm going to have you read
14 this to us, please. And first of all, who did you
15 address it to, if you remember?

16 A. This one was going to Lonely Boy, I think.

17 Q. Who is Lonely Boy?

18 A. Arthur Chavez.

19 Q. Was he an SNM Gang member?

20 A. Yes.

21 Q. All right. Go ahead. And please begin
22 reading.

23 A. "Q-vo, homie, Lonely. The viejo told me
24 to get at you concerning the list you and him talked
25 about. We have been through a small transition due

1 to the tactics of Gregg Marcantel. He has degraded
2 the viejo and dishonored the familia."

3 Q. Let me stop you there. Who is the viejo
4 that you're referring to?

5 A. Pup.

6 Q. And who is Pup?

7 A. Anthony Baca.

8 Q. And who is the "familia" that's been
9 dishonored?

10 A. SNM.

11 Q. Please continue.

12 A. "It is vital that you understand this.
13 And we have decided to make a statement of our own.
14 This is not a request. It is an objective" -- or
15 directive, I can't -- I don't remember what I put.
16 Objective, I think -- "that must be handled
17 carefully and discreetly. We have three carnals out
18 there who are on standby, and who are ready at our
19 word to take out the carnals who dishonor their
20 orders. We have made some changes and there will be
21 no more second chances. The viejo spoke with you
22 about the list, so now it's time to get it done."

23 Q. Let me stop you there. Does the viejo
24 still refer to Anthony Baca?

25 A. Yes.

1 Q. And what are you talking about when you
2 say that he spoke to him about a list?

3 A. About -- what -- at the time we were
4 talking about the administration, the list of
5 Santistevan -- both Santistevans should be hit.

6 Q. Okay. And so initially, you told us that
7 it started with his son. How is it that this letter
8 now focuses on people like Santistevan and
9 Marcantel?

10 A. Because Eric -- when me and Eric had a
11 conversation -- a few conversations, actually -- he
12 told me that Pup was in contact with him, and read
13 me a letter that Pup had wrote him. Pup trusted
14 Crazo a lot. And he had told me, he said, "Hey, he
15 wants to make a bigger statement. Not just
16 Santistevan anymore. He wants to go higher."

17 And he was pissed off, the way Marcantel
18 had talked to him, degrading him in front of
19 everybody.

20 Q. Now, what are you referring to there when
21 you said he degraded him in front of everybody?

22 A. Well, because Marcantel had made one of
23 them -- he had made, like, a gesture saying that you
24 guys -- your leaders, your so-called leaders, are
25 crybabies. You know, they were crying when they

1 left there this morning, and stuff like that. And
2 he got wind of it. He heard about what happened.
3 And so Crazo had ran it down to me that he was
4 pissed off; he wanted something done; he wanted it
5 done.

6 Q. Did Mr. Baca see that as disrespectful
7 towards him?

8 A. Yes.

9 Q. You said, "When he was leaving." Where
10 was he leaving?

11 A. Out of state.

12 Q. So as a result of the Molina murder, did
13 he and others get sent out of state?

14 A. Yes.

15 Q. Please continue.

16 A. Reading?

17 Q. Yes.

18 A. Where was I at?

19 Q. We were talking about the list. The viejo
20 spoke with you about a list.

21 A. "So now it's time to get it done. The
22 priority is the head of the NMCD, Marcantel. He
23 must go. The following are some carnals who you are
24 to get in contact with and organize the objective.
25 If they refuse, you have the green light to handle

1 them. You have the green light to get this
2 objective done by any means possible. You have
3 until midnight, August 31, to get this done. If you
4 fail or reject this" --

5 Q. At the top, "If you fail or reject
6 this" --

7 A. -- "order, the carnals will visit you and
8 you will not get a second chance. However, if you
9 do, you will have the keys to those same carnals at
10 your disposal. And there are only three, so that
11 the risk is minimal."

12 Q. What are you talking about, the keys to
13 those carnals?

14 A. Like they have authority over them.

15 Q. Please continue reading.

16 A. "But those three brothers are only on
17 standby for carnals who fail us or reject us. They
18 remain secret, and are not to be used for the
19 objective. If they see you talking to the cops,
20 they will visit you. So, my brother, get this done
21 and make the statement with us. Here is the carnals
22 for you to get in contact with, and get them on the
23 mission. They don't have a choice. They need to
24 earn their bones. If they refuse, it is your duty
25 to handle it before we have" --

1 Q. Where it says "before we have to step in"?

2 A. Yeah. I don't know where it's at. Oh,
3 yeah: "If they refuse, it is your duty to handle it
4 before we have to step in."

5 And then I gave Cuba, Gotti, Spider, Mono,
6 Mando, and Kilo their info, their numbers, and stuff
7 like that. Their info.

8 Q. Who were those individuals you just named?

9 A. They were all carnals, SNM.

10 Q. What does the bottom of the letter say?

11 A. It says, "These six brothers are under
12 you. The order is for them. You are in charge. Do
13 what you have to do. But get it done. The person
14 who gives you this, she will keep in touch. From
15 here on, we will get ahold of you. Do not write us
16 or try to get ahold of us, because they are on us
17 deep. Keep your head up. Catos 4 life, Amor."

18 Q. Up above, it refers to the head of the
19 NMCD, Marcantel. What is the NMCD?

20 A. New Mexico Corrections Department.

21 Q. Why did you write this letter?

22 A. To get Marcantel hit.

23 Q. And did you really want that to happen?

24 A. Yes.

25 Q. How upset were you with him and the

1 administration as a result of getting locked down
2 and things of that nature?

3 A. I was pretty upset.

4 Q. And you mentioned Marcantel by name. So
5 this really isn't a coded letter. How did you
6 expect this to get out of the prison and onto the
7 streets?

8 A. Well, Crazo had a way of -- we had done
9 this before. We had to send it legal mail, out to
10 his girl, and then his girl would give it to other
11 people and stuff. So I trusted that way. And
12 that's where we sent it, how we sent it, or how I
13 believed it was at the time.

14 Q. And so did -- based on a prior success
15 getting things through, did you believe that this
16 would also get through?

17 A. Yes.

18 Q. Let me turn your attention to 274. This
19 is another letter that you wrote?

20 A. Yes.

21 Q. Go ahead and begin reading, please.

22 A. "Q-vo, carnal. It's time to make a
23 statement to Gregg Marcantel. He needs to listen to
24 us. The big homie got at you in Cruces and ran it
25 down to you already back in '13. So you on point."

1 Q. Let me stop you there. When you say
2 "Q-vo," what does that mean?

3 A. "Q-vo" just means, like, "hi."

4 Q. And then you refer to a big homie getting
5 back to him in '13. What does that mean?

6 A. Because at the time Crazo had told me
7 something about him knowing what Pup -- what we
8 talked about with Pup in 2013, and that he had got
9 at Gotti already about some of that stuff. So
10 that's what I was talking about.

11 Q. Who is Gotti?

12 A. He was a brother. I don't know his real
13 name.

14 Q. Please continue reading.

15 A. "So now get it done, homie. Here is
16 Cuba's, whatever, address, number. Ask for Damian,
17 this and that, or go to" -- and then I gave some
18 other address. "Tell him he needs to go with you on
19 this mission. There are three brothers on standby
20 if any brother refuses this. So it's your call. If
21 Cuba refuses, set an example. We are done playing
22 games and giving people breaks. From now on,
23 whoever turns their backs on us out there will be
24 dealt with out there. So in July, August, a carnal
25 will get at you with some info on the target. But

1 if you get it first, handle it. Amore, Catos for
2 life. Big homie."

3 Q. And is Amore a way that you talk to each
4 other sometimes?

5 A. Yes.

6 Q. And what do you mean when you say Catos?

7 A. Syndicatos. That's an old -- Angel is the
8 one that taught me how to say that among the big
9 homies.

10 Q. And it says, "If Cuba refuses, set an
11 example." What do you mean when you say that?

12 A. Kill him.

13 Q. Let's turn to Exhibit 275. Do you
14 remember when you wrote these? You referred to, I
15 think, the July-August timeframe in some of these
16 letters. So was this before July or August of 2015?

17 A. Yes.

18 Q. Let me have you begin reading this letter,
19 please.

20 A. "Carnalito, the big homies have come
21 together and we have decided that those of you who
22 are out there and still need to show your loyalty,
23 your time has come. There is a mission for that
24 needs to be done. The homie, Gotti, will get in
25 contact with you, and here is his number. The

1 sooner you call, the better. Both of you will be
2 given until August or September to accomplish the
3 following goal. There are three brothers on standby
4 if you should feel as though you are not obligated
5 to fulfill your responsibility. The name Gregg
6 Marcantel is a name you should know. He sent a
7 message to us and made his statement. Now we are
8 ready to make ours. He needs to go, and both of you
9 need to get it done clean. Get everything ready and
10 our brother will get at you in July or August. This
11 is not a request or a democracy. It needs to get
12 done. And if we have to find someone else, then the
13 brothers who found you to give you this message will
14 deal with you and your family, whoever you are with.
15 So honor your obligation to the family and get this
16 done. Catos for life. Amor."

17 Q. Now, there is a portion here where it
18 says -- he's referring to Marcantel: "He sent a
19 message to us and made his statement, and now you
20 guys want to make yours." What is the statement
21 you're referring to that Marcantel sent you?

22 A. After the murder of Javier Molina, they
23 locked us up, had us in those strip cells, and then
24 Marcantel came himself personally and told us about
25 Pup being a crybaby, pretty much saying -- he didn't

1 use them words exactly -- but he said something to
2 the effect that your so-called leaders are on their
3 way out and, guess what, they were crying.

4 And talking like that to us in the pod, in
5 front of everybody. And at that time he pulled all
6 the SNM members out in handcuffs to talk to us about
7 that.

8 Q. And so even before the Molina hit, was Mr.
9 Baca angry with the administration?

10 A. Yeah, he was already angry because of them
11 locking him up.

12 Q. And then after the Molina murder, was
13 Gregg Marcantel then added to this hit list, in
14 addition to Santistevan?

15 A. Yes.

16 Q. What about somebody named Adam Vigil?

17 A. He wasn't, no. We didn't really talk
18 about him.

19 Q. He wasn't part of your conversation?

20 A. No, he wasn't part of my conversation with
21 him. He was mostly pissed off at Santistevan when I
22 first talked to him.

23 MR. CASTELLANO: May I have a moment, Your
24 Honor?

25 THE COURT: You may.

1 MR. CASTELLANO: I pass the witness.

2 THE COURT: Thank you, Mr. Castellano.

3 Ms. Bhalla, are you going to take the lead
4 here?

5 MS. BHALLA: Thank you, Your Honor.

6 THE COURT: Ms. Bhalla.

7 CROSS-EXAMINATION

8 BY MS. BHALLA:

9 Q. Good morning, Mr. Martinez.

10 A. Good morning.

11 Q. You testified on direct that you began
12 cooperating with the Government I think in December
13 of 2015; is that right?

14 A. Yes.

15 Q. And I believe at some point you had a
16 meeting with them -- and I think Agent Acee was
17 there, and I think Mr. Castellano was there -- and
18 that was on December 17. Does that sound right?

19 A. Yes.

20 Q. Okay. And were you truthful with them in
21 that meeting?

22 A. Yes.

23 Q. Okay. So you wanted to tell them what you
24 knew in a truthful fashion?

25 A. Yes.

1 Q. Okay. One of the things that you did in
2 that meeting, at least the way that I read the
3 report, is, you took the opportunity to tell them
4 about some current hits that were out on members of
5 the SNM. Do you recall that conversation?

6 A. Yeah.

7 Q. And those were hits that were outstanding?

8 A. Yes.

9 Q. Okay. And one of the people that you
10 warned about being hit was Carlos Herrera. Do you
11 recall that?

12 A. Yes.

13 Q. Okay. And part of the reason that there
14 was a hit on Carlos Herrera was because he refused
15 to follow orders to have Javier Molina killed; isn't
16 that correct?

17 MR. CASTELLANO: Objection, calls for
18 hearsay.

19 THE COURT: Well, are you trying to elicit
20 that out-of-court statement?

21 MS. BHALLA: I think it goes to 803(3),
22 Your Honor. And if I'm correct, the Government has
23 relied on that a lot to get in similar plans.

24 THE COURT: Well, but whose state of mind
25 are you trying to get this --

1 MS. BHALLA: This witness' state of mind,
2 Your Honor.

3 THE COURT: Well, I don't see how that's
4 relevant here. Sustained.

5 BY MS. BHALLA:

6 Q. Did you have any personal knowledge about
7 that plan?

8 A. What plan, Miss?

9 Q. The plan to have Carlos Herrera hit.

10 A. No.

11 Q. Okay. That was just something you heard
12 about?

13 A. Um-hum.

14 Q. Okay.

15 A. Yes.

16 Q. You also discussed a meeting that took
17 place talking about how things were going in the SNM
18 and that you testified that Carlos Herrera was
19 present for that meeting. Do you recall?

20 A. That he was present for the meeting?

21 Q. Yeah, that you had a meeting in 2013 in
22 Southern, and that Carlos Herrera was there for that
23 meeting?

24 A. Yes.

25 Q. And you testified a little bit about that

1 meeting, but part of what you told the Government
2 was that the purpose of that meeting was that people
3 needed to stop killing each other in the SNM; isn't
4 that right?

5 A. Right.

6 Q. And that people needed to stop spreading
7 rumors about other members in the SNM; right?

8 A. Yes.

9 Q. And at some point you sent a letter to
10 Agent Vigil; is that correct?

11 A. Yes.

12 Q. And in that letter you asked to get
13 transferred back to Southern -- and this was after
14 you were cooperating; right?

15 A. Yes.

16 Q. And in that letter you asked to get
17 transferred back to Southern?

18 A. Yes.

19 Q. And you got asked to move -- to be moved
20 into the same pod as Carlos Herrera; do you recall
21 that?

22 A. Yes.

23 Q. And part of the reason that you wanted to
24 do that was because you said that Carlos got along
25 with people and didn't plot to kill other people;

1 isn't that true?

2 A. Right.

3 MS. BHALLA: May I have a moment, Your
4 Honor?

5 THE COURT: You may.

6 MS. BHALLA: I'll pass the witness, Your
7 Honor. Thank you.

8 THE COURT: Thank you, Ms. Bhalla.

9 Mr. Lowry, do you have cross-examination
10 of Mr. Martinez?

11 CROSS-EXAMINATION

12 BY MR. LOWRY:

13 Q. Good morning, Mr. Martinez.

14 A. Good morning.

15 Q. Mr. Martinez, you really didn't like the
16 restrictive conditions when you were locked down,
17 did you?

18 A. No, sir.

19 Q. And you testified this a little bit on
20 direct, but after, when you were locked down, you
21 did file a civil suit against the prison system?

22 A. Yes.

23 Q. And as part of that suit, you talked about
24 the disrespect you felt from the administration?

25 A. Right.

1 Q. And even mentioned as part of that suit
2 the disrespect that Secretary Marcantel -- you felt
3 he gave to you when he spoke to you and other SNM
4 members; correct?

5 A. Yes.

6 Q. And in your civil suit at paragraph 18,
7 you quoted Defendant Marcantel as stating, "Your
8 so-called leaders, when they found out they were
9 being shipped out, guess what, they started crying"?

10 A. Yes.

11 Q. And that was a meeting that happened just
12 after Mr. Molina had been killed at Southern;
13 correct?

14 A. That's right.

15 Q. And that meeting, Mr. Marcantel rounded up
16 everybody and came down to talk to them?

17 A. Yes.

18 Q. And that's when he made that statement?

19 A. Yes.

20 Q. But everybody knew he was lying when he
21 made that statement?

22 A. Well, yeah. At the time, yes, we were
23 thinking he was just trying to provoke us.

24 Q. But it made you upset.

25 A. Right.

1 Q. And that's something that carried forward
2 with you?

3 A. Yes.

4 Q. Now, over the course of 2015, the lawsuit
5 was filed. Do you remember when you filed it? May
6 26, 2015? Does that sound right?

7 A. Yes.

8 Q. And at that point in time, you'd already
9 met Mr. Duran, and you were living in close
10 proximity with him; correct?

11 A. He was my neighbor.

12 Q. Right. He was your neighbor, and Robert
13 Martinez lived on the other side of Mr. Duran?

14 A. Yes.

15 Q. And so you filed this suit, saying, "These
16 conditions are deplorable. I need to do something
17 to change them"?

18 A. Yes.

19 Q. But the lawsuit -- you testified on direct
20 that the administration's response was somewhat
21 helpful, but it didn't change your conditions, did
22 it?

23 A. Well, filing the lawsuit was mainly to
24 prove a point and get them to, yeah, change their
25 ways with the SNM, but I knew it wasn't going to

1 happen right away. I didn't expect the change right
2 away. I just -- I was going to follow through with
3 the lawsuit.

4 Q. But my question is very simple. Your
5 conditions didn't change in the summer of 2015, did
6 they?

7 A. No.

8 Q. And in fact, when your conditions didn't
9 change, you decided to take another course of action
10 and you started a letter writing campaign to Adam
11 Vigil?

12 A. No, that's not how it went down.

13 Q. Okay. So you didn't write Adam Vigil on
14 September 29, 2015, in the inter-prison mail?

15 A. Yeah, that was later. But the question
16 you asked earlier is that I didn't just -- because
17 the lawsuit didn't work and they didn't change, I
18 didn't just start saying, "All right, well, let's
19 just start writing letters"; that didn't just pop
20 into my mind.

21 Q. Did your conditions change in March of
22 2015?

23 A. No.

24 Q. You filed your lawsuit in May. Did your
25 conditions change in June of 2015?

1 A. No.

2 Q. Did they change in July of 2015?

3 A. No.

4 Q. Did they change in August of 2015?

5 A. No.

6 Q. And did they change in September 2015?

7 A. No.

8 Q. And at the end of September 2015, you
9 wrote Adam Vigil a letter in the interoffice mail?

10 A. Yes.

11 Q. And do you remember telling Adam Vigil
12 that you wanted out; you wanted -- you didn't want
13 to talk to him; right?

14 A. Right.

15 Q. You didn't want anybody to know you were
16 talking with him?

17 A. Right.

18 Q. But you wanted to change your
19 conditions --

20 A. Yeah.

21 Q. -- of confinement?

22 A. I wanted to get out of there, yes.

23 Q. And you told Adam Vigil that you wanted to
24 go to Arizona?

25 A. Yeah.

1 Q. Because you didn't want to be in the
2 restrictive conditions that you were housed in in
3 the Department of Corrections?

4 A. Right.

5 Q. Okay. So you said -- you basically
6 informed him you were ready to hang up your life and
7 change your ways, and you wanted to relax in
8 Arizona, get away from it all?

9 A. Yes.

10 Q. Now, in that letter, you made a comment to
11 Mr. Vigil. And Adam Vigil worked with the Security
12 Threat Intelligence Unit; right?

13 A. Um-hum.

14 Q. And he worked under Dwayne Santistevan?

15 A. Right.

16 Q. And he was probably the deputy of that
17 department?

18 A. Yes.

19 Q. You wrote to Adam Villa in your September
20 29, 2015, letter, "Sometimes I think we all think
21 you guys set us up to kill each other, the way you
22 move us with no rats and victims"?

23 A. Yeah.

24 Q. Did you mean that?

25 A. Yes.

1 Q. So what did you mean by that?

2 A. Just what I said. You have us here, and
3 it seems like you want us to kill each other,
4 because -- mix us up.

5 Q. So you were essentially placing blame on
6 the administration for the level of violence in the
7 prison?

8 A. Yes.

9 Q. Saying they knew what they were doing by
10 placing people who were going to be hurt in an
11 environment where they were certain to be hurt?

12 A. Yes.

13 Q. And they knowingly did that?

14 A. Yes.

15 Q. And they did really nothing to prevent
16 that from happening?

17 A. That's what I was thinking at the time,
18 yes.

19 Q. Now, one of the things that bothered you
20 about the restrictive conditions of confinement is
21 all of your electronics had been taken away;
22 correct?

23 A. Right.

24 Q. Your MP3 player; you couldn't listen to
25 videos?

1 A. Everything.

2 Q. You could have a TV if you could afford
3 one, but you didn't have that, either?

4 A. Nothing.

5 Q. And you wrote to Adam Vigil later, after
6 the 29th, and you said you were soliciting him to
7 help you out, but he didn't really help you out, did
8 he?

9 A. No.

10 Q. And you said you wanted to talk to him and
11 you had more -- and I quote from your letter, "I
12 still had more to talk about now. I won't see my
13 electronics till December. I haven't had my stuff
14 since February"; right?

15 A. Um-hum.

16 Q. So you're complaining to him that you
17 wanted your property back.

18 A. Right.

19 Q. And you'd be willing to help him out as
20 long as you could get your property back.

21 A. Well, not like that, but I was asking him
22 if he could help me get it back. That's basically,
23 you know --

24 Q. And this is later in the fall, because you
25 said, "I was supposed to get it," meaning your

1 property, "back on October 12"?

2 A. Um-hum.

3 Q. Right?

4 A. Yes.

5 Q. But you hadn't gotten it back?

6 A. Yeah.

7 Q. And in fact, your conditions got worse
8 because they assigned you to what they called the
9 predator program?

10 A. Yes.

11 Q. So your conditions of confinement didn't
12 get better; they got worse?

13 A. They got worse, yes.

14 Q. I think the saying is, "No good deed goes
15 unpunished"; right?

16 A. Yes.

17 Q. Now, you wrote yet another letter to
18 Mr. Vigil in the fall -- and this is before the
19 December 3, 2015, takedown -- and at this point you
20 really wanted to get out of your conditions of
21 confinement, didn't you?

22 A. I was trying to get out, yes.

23 Q. And you even basically write them and say,
24 "Hey, something is going on with Marcantel but I
25 want out of it"?

1 A. Yes.

2 Q. And you place the blame in your letter on
3 Robert Martinez?

4 A. Yes.

5 Q. And you wrote to Adam Vigil and you said,
6 "Rob went on a mission and wanted to hit major
7 people, and was out of control before he left. So I
8 backed off. No one but him and I and someone on the
9 streets knew about his plans"?

10 A. That's right.

11 Q. That's what you told Adam Vigil?

12 A. Yes, because he had disappeared. Robert
13 had disappeared, and I got paranoid. I started
14 thinking he --

15 Q. Robert dropped out?

16 A. Yes.

17 Q. He went to the RPP Program?

18 A. Right.

19 Q. The drop-out program?

20 A. Yeah.

21 Q. He said, "I'm hanging up my shingle, I'm
22 out of here"?

23 A. Well, he didn't say nothing. Actually, he
24 just left. And I kind of knew...

25 Q. And you could have done that?

1 A. I could have, yeah.

2 Q. But you didn't want to?

3 A. No.

4 Q. Okay. And you could have knocked on the
5 door at any time and said -- well, you were in Level
6 6 -- but at any time you could have PC'd.

7 A. Yes.

8 Q. Like you were talking about, you could
9 have thrown ice on an officer; correct?

10 A. That's right.

11 Q. And you could have gotten out at any
12 point?

13 A. Yes.

14 Q. But you tried your letter-writing campaign
15 to do that.

16 A. That's right.

17 Q. And at this point you're writing them,
18 putting them on notice: I'm withdrawing from this
19 conspiracy, in your mind?

20 A. Trying to, yeah.

21 Q. In your final letter to Mr. Vigil, you'd
22 gotten written up for having too much medication in
23 your cell.

24 A. That's right.

25 Q. And you're still desperately trying to get

1 out of Level 6?

2 A. The situation, yeah.

3 Q. Right. And you had informed him about
4 what was going on to your knowledge?

5 A. Yes.

6 Q. And you said, "Knowing what I told you,
7 ain't nothing changed. Trust me, the plans are
8 still in effect. I'm staying out of it. Hope they
9 fail."

10 Is that what you told him?

11 A. That's right.

12 Q. But you also said, "Now, can you please
13 talk to the district officer about maybe suspending
14 sanctions and giving me a chance?"

15 A. Yes.

16 Q. Because you were over it.

17 A. Yeah, I was getting written up left and
18 right.

19 Q. Now, when this indictment came down on
20 December 3, 2015, you were pulled in to speak with
21 the arresting agents; correct?

22 A. That's right.

23 Q. And you told them at that point, you said:
24 "I don't know what's going on"; correct?

25 A. That's correct.

1 Q. But soon thereafter, in mid-December, you
2 said, "Wait a second, this is my opportunity"?

3 A. Yes.

4 Q. And you met with the officers; right?

5 A. Um-hum.

6 Q. You met with the FBI, didn't you?

7 A. Yes.

8 Q. And they were really curious about what we
9 were just talking about, this Gregg Marcantel
10 conspiracy; correct?

11 A. That's right.

12 Q. And you told them -- well, you told them
13 you only understood there was a conspiracy against
14 Dwayne Santistevan.

15 A. That's right.

16 Q. You didn't mention Gregg Marcantel at all.

17 A. Right.

18 Q. And in fact, you told them that even with
19 Dwayne Santistevan, the only way that came up is
20 that you were approached by Eric Duran.

21 A. Right.

22 Q. And that Eric Duran approached you saying,
23 "Hey, we got to kill Dwayne Santistevan."

24 A. Yeah. Well, he was there in 2013, so I
25 knew he knew what Pup had talked about.

1 Q. We're going to talk about that in a
2 minute. But you told the FBI, the folks that work
3 for the United States prosecutors, that you didn't
4 approach Eric Duran about it; he came to you and
5 said, "We've got to hit Dwayne Santistevan."

6 A. Yes.

7 Q. Okay, and in fact, when you talked to the
8 FBI on December 17, 2017, you didn't mention
9 anything about this conversation with you, Mr. Baca,
10 and Eric Duran, did you?

11 A. I think I did.

12 MR. LOWRY: Okay. May I approach, Your
13 Honor?

14 THE COURT: You may.

15 BY MR. LOWRY:

16 Q. Take a moment to review that and let us
17 know when you're finished reviewing it.

18 A. All right.

19 Q. Did that report say anything about a
20 meeting in 2013 between you, Mr. Anthony Ray Baca,
21 and Eric Duran?

22 A. No.

23 MR. LOWRY: May I approach, Your Honor?

24 THE COURT: You may.

25

1 BY MR. LOWRY:

2 Q. Now, when you met with the FBI, you knew
3 how important that meeting was, didn't you?

4 A. Yes.

5 Q. Because you knew that that was your chance
6 to get out of the restrictive conditions of
7 confinement you were facing?

8 A. Well, no, I was already off of that
9 restriction at that time. We were moved to --

10 Q. The federal marshal hold?

11 A. So I was out of it.

12 Q. But they said, "Hey, if you want to work
13 with us, we can even make your life better"?

14 A. No, they didn't say that.

15 Q. They didn't?

16 A. No.

17 Q. But my point is: You didn't mention that
18 meeting on December 17, 2015?

19 A. Well, I'm pretty sure I did.

20 Q. So you think they just didn't write it
21 down?

22 A. I don't know, but I talked about it.

23 Q. Okay. There is no documentation of it,
24 and you just looked at it.

25 A. That's right.

1 Q. Do you think the FBI -- they're in the
2 business of solving crimes; right?

3 A. That's right.

4 Q. And they specifically asked you about the
5 Marcantel conspiracy?

6 A. Yes.

7 Q. And there is nothing in that report that
8 mentions that meeting?

9 A. It appears not.

10 Q. And in fact, the FBI was so curious to
11 understand what you understood, they met with you
12 again in January; isn't that right?

13 A. That's right.

14 Q. And they met with you on approximately
15 January 21, 2016?

16 A. Yes.

17 Q. And yet again, you sat with them for a
18 period of time; right?

19 A. Um-hum.

20 Q. Hours?

21 A. Yes.

22 Q. And you sat with them in this district
23 court house right here that we're sitting in today?

24 A. Um-hum.

25 Q. And it was -- Special Agent Bryan Acee was

1 at that meeting?

2 A. Yes.

3 Q. And Special Agent Joseph Sainato?

4 A. I'm not too sure who he is.

5 Q. But there were at least three FBI agents?

6 Thomas Neale was there?

7 A. Yeah, there was a bunch of people in
8 there.

9 Q. And there was a task force officer from
10 the Department of Corrections, Anthony Medrano?

11 A. Yes.

12 Q. And Ms. Maria Armijo was there?

13 A. Yes.

14 Q. And Randy Castellano, who did your direct
15 examination, was there?

16 A. Yes.

17 Q. And even your attorney Marcia Milner was
18 there?

19 A. Yes.

20 Q. And you even had your defense investigator
21 there?

22 A. Yes.

23 Q. And yet again at this other meeting with
24 all of those people present, all right, they wanted
25 to know what you knew.

1 A. Right.

2 Q. You didn't say anything about this
3 meeting, this purported meeting, between you, Eric
4 Duran, and my client, Mr. Anthony Ray Baca?

5 A. Right.

6 Q. So you had another follow-up meeting with
7 the FBI in October?

8 A. Yes.

9 Q. By this time, your conditions of
10 confinement got better, didn't they?

11 A. Yes.

12 Q. You'd been signed up as a confidential
13 source in early spring, just after that January
14 meeting?

15 A. Yes.

16 Q. You got extra phone call privileges;
17 right?

18 A. Got the same that we always get.

19 Q. Oh, you didn't get extra phone calls?

20 A. No, they were the same as anyone that's on
21 Level 3.

22 Q. But the United States Government was
23 giving you money so you could make more calls?

24 A. Yes.

25 Q. And they gave you money so you could buy

1 commissary?

2 A. Yes.

3 Q. And they gave you money so you could buy
4 stationery to write your attorneys and family
5 members?

6 A. Yes.

7 Q. So they made sure that your life improved?

8 A. Yes.

9 Q. And in exchange for all the benefits they
10 were giving you and improving your life, they came
11 to visit you again in October -- pardon me, they
12 came to visit you in September -- September 15 of
13 2016?

14 A. Yes.

15 Q. And again, they wanted to talk to you
16 about the SNM?

17 A. Yes.

18 Q. And they wanted to know everything you
19 knew about all the activities that they wanted to
20 charge people with, they had charged people with;
21 right?

22 A. Um-hum.

23 Q. Because you were charged --

24 A. Yes.

25 Q. -- and they charged you with the

1 conspiracy to kill Gregg Marcantel?

2 A. Yes.

3 Q. And the conspiracy to kill Dwayne
4 Santistevan?

5 A. Yes.

6 Q. And yet, again, on September 15 of 2016,
7 you didn't mention anything about this meeting that
8 you claim happened in the rec yard in 2013 between
9 you, Eric Duran, and my client, Anthony Ray Baca?

10 A. Yes.

11 Q. Now, as part of being a confidential human
12 source, you actually signed a contract with the FBI;
13 correct?

14 A. Yes.

15 Q. And part of that, you know, that's how you
16 got the monthly benefits you were receiving?

17 A. Yes.

18 Q. And you promised them you'd be honest with
19 them.

20 A. Yes.

21 Q. And you're aware that you can lie by
22 omitting information?

23 A. I'm aware of what?

24 Q. Are you aware that you can lie to somebody
25 by not telling them everything you really know?

1 A. Yes.

2 Q. And the FBI came back to see you in
3 December 2016, did they not?

4 A. Yes.

5 Q. And again, you didn't tell them anything
6 about this meeting on the rec yard in the Southern
7 Correctional Facility in 2013?

8 A. I'm sure I said it.

9 Q. You don't think the FBI is in the habit of
10 documenting important information?

11 A. Yes. But they're also -- I found some
12 mistakes there that I pointed out to them, too.

13 Q. That brings up an important point. Before
14 the FBI filed their reports, they gave you the
15 opportunity to review them, didn't they?

16 A. Yes.

17 Q. And you got a chance to go through each
18 report and correct it?

19 A. Yeah.

20 Q. And you never said, "Hey, you're missing
21 the information about this meeting that happened in
22 the Southern Correctional Facility in 2013, between
23 me, Eric Duran, and Anthony Ray Baca," did you?

24 A. No. But I pointed out to them that that
25 information was correct.

1 Q. Right. But you never told them in any of
2 these reports that they asked you to correct, "Hey,
3 you forgot about this meeting between me, Eric
4 Duran, and Anthony Ray Baca in 2013"?

5 A. No.

6 Q. It wasn't until you were on the stand
7 today that we heard for the first time about this
8 meeting between you, Eric Duran, and Anthony Ray
9 Baca in 2013?

10 A. Yes.

11 Q. Now, you testified on direct about the
12 benefits you received as a result of your
13 cooperation?

14 A. Yes.

15 Q. And despite -- the monthly stipend you got
16 to make phone calls; right?

17 A. Yes.

18 Q. You got a monthly stipend to buy
19 commissary for yourself, you had a monthly stipend
20 to write letters home, and you still misbehaved
21 while you were incarcerated?

22 A. Yes.

23 Q. And you used drugs?

24 A. Yes.

25 Q. And you were provided with the tablet with

1 all of the discovery in this case; correct?

2 A. Yes.

3 Q. And you had every opportunity to look at
4 all of the discovery that everybody had?

5 A. Right.

6 Q. And by that time you understood you'd been
7 recorded by Eric Duran?

8 A. Um-hum.

9 Q. And by that time, you knew, based on the
10 tablet, that you'd been recorded by Eric Duran when
11 you lived with him in March of 2015?

12 A. Yes.

13 Q. And you knew that he was recording you and
14 Robert?

15 A. Yes.

16 Q. And you'd heard all of those 18 recordings
17 between the three of you?

18 A. I didn't hear all of them.

19 Q. You didn't?

20 A. No, I didn't sit there listening to all of
21 that stuff, because I already knew what happened.

22 Q. Right. But you got to listen to all the
23 other evidence in the case; right?

24 A. If I wanted to. But a lot of times I
25 didn't really pay attention. It was boring, to be

1 honest with you.

2 Q. Well, and you were getting the benefits;
3 you'd already decided to cooperate?

4 A. Right.

5 Q. And in fact, you entered your plea
6 agreement in the fall of 2016?

7 A. Yes.

8 Q. So at that point, you lost interest in the
9 information on the tablet?

10 A. Yes.

11 Q. Okay. And you said, "Well, I can put this
12 tablet to better uses; I'll just reset the tablet
13 and use it for my Facebook messaging"?

14 A. Well, the way you word it like that is
15 like I planned that. It just wasn't planned that
16 way. It just happened that way, yes.

17 Q. Oh, the tablet reset itself?

18 A. No, I'm saying that I did the -- I reset
19 the table, but I didn't know nothing about Facebook
20 or Wi-Fi or nothing at the beginning. It took a
21 while before that happened.

22 Q. So you taught yourself how to use Facebook
23 with the tablet that the Government gave you to
24 review the evidence in the case?

25 A. Yes.

1 Q. And you used that Facebook page you
2 created?

3 A. Right.

4 Q. And you didn't create it by accident, did
5 you?

6 A. No, I had help. I mean, I've been in
7 prison 20 years.

8 Q. And you were mentored and tutored; right?

9 A. Yes.

10 Q. So you could communicate with all of your
11 family members?

12 A. With whoever was on Facebook, yes.

13 Q. Anybody?

14 A. Yes.

15 Q. And that was a benefit you'd never had
16 before?

17 A. Right; never had that in my life.

18 Q. And you also used it to download video
19 games?

20 A. Yes.

21 Q. So you could pass the time more easily?

22 A. Yes.

23 Q. And you also used it, as you said -- for a
24 while you couldn't access the internet directly, so
25 you lent your tablet to Jerry Armenta?

1 A. And to Jerry Montoya, both Jerrys, because
2 they both used it at one time.

3 Q. So they knew the good porn sites; right?

4 A. Yes.

5 Q. So they could get you to the right porn
6 sites?

7 A. That's right.

8 Q. Did you ever direct them, "Hey, I'm
9 interested in this"?

10 A. No, I pretty much just said: "Do
11 whatever, help me out." It's like a thing, because
12 I didn't know how to use the internet for a long
13 time. It was hard for me to get that adjustment.
14 But Kreaper is the one that taught me how to do that
15 eventually.

16 Q. So they taught you how to misuse your
17 tablet?

18 A. Basically, yeah.

19 Q. And they taught you how to find
20 pornography, which is not appropriate to have in the
21 Sandoval facility?

22 A. That's right.

23 Q. Now, you're also aware, because you were
24 using Suboxone, that they were using this to
25 communicate to other people to get drugs inside the

1 facility?

2 A. Yes.

3 Q. And you're aware that drugs are still
4 flowing in?

5 A. Yes. At some point, yes.

6 Q. But you didn't tell anybody at this table
7 or the FBI agents, "Hey, you should get these guys
8 to cut this out"?

9 A. No, sir.

10 Q. And in fact, your most recent housing
11 assignment -- we won't talk about where -- you were
12 housed with Jerry Montoya, Richard Gallegos, and
13 Eugene Martinez; correct?

14 A. Correct.

15 Q. And you were aware that Jerry Montoya and
16 Richard Gallegos and others were not behaving well
17 at all inside the facility?

18 A. Yes.

19 Q. And in fact, Jerry Montoya struck up a
20 romantic affair with one of the correctional guards?

21 A. Yes.

22 Q. And that's another technique people do,
23 you know, to try to strike up relationships to get
24 people to courier in drugs for them?

25 A. That's correct.

1 Q. And you turned basically a blind eye to
2 that?

3 A. I did.

4 Q. And you knew that Mr. Montoya was getting
5 heroin?

6 A. Heroin, no. I didn't know about heroin,
7 but I know about other drugs.

8 Q. Okay. What other drugs were you aware of
9 that he brought in?

10 A. Suboxones, meth, pills; a bunch of pills.

11 Q. And he shared his Suboxone with you there?

12 A. Yes.

13 Q. And you were aware, as part of this
14 relationship with the correctional officer there,
15 that he'd actually smuggled in a cellphone?

16 A. Yes, that was actually before the drugs,
17 he got the cellphone.

18 Q. And I mean, did he let you have cellphone
19 privileges?

20 A. No. He just let me take pictures. I took
21 pictures, send them to family members. At one point
22 I talked to my son.

23 Q. But you knew throughout the course of
24 2016 -- or you should have known -- that all the
25 discovery in this case was confidential?

1 A. Yes.

2 Q. And you knew that Mr. Montoya was letting
3 other people, correctional officers, videotape the
4 videotapes in this case?

5 A. That's correct.

6 Q. And those correctional officers had a
7 sordid interest to watch the Molina homicide video,
8 and Jerry Montoya let those correctional officers
9 record that, didn't they?

10 A. Yes.

11 Q. And you didn't say anything to the folks
12 at this table?

13 A. I told my lawyer to notify Maria about
14 what was going on in that facility, yes.

15 Q. You did that after.

16 A. When it started happening, yes, I did
17 that. I mostly asked what needed to be done, if we
18 knew we were going to get the CO that was -- because
19 a similar thing happened in Sandoval, where we were
20 going to get one of the COs that were not, you
21 know -- that were bringing in drugs.

22 Q. Okay. Let me back up and understand
23 this -- make sure I understand this correctly,
24 though. You had Bryan Acee's cellphone number?

25 A. I don't know if it was a cell number, but

1 I had his number, yes.

2 Q. And the Government has paid you in a
3 contract that you signed with the FBI?

4 A. Yes.

5 Q. Paid you money so you could use the
6 telephone?

7 A. Yes. It's an open line. You don't talk
8 about stuff like that on one of them open lines.

9 Q. Oh, you're worried about reporting crime
10 on an open line?

11 A. Yes.

12 Q. Why? Because a law enforcement officer
13 might found out about it?

14 A. I'm worried about talking to an FBI agent
15 on a regular line like that, and it's a recorded
16 call. When I talk to my lawyer, I tell my lawyer --
17 I relay the message to my lawyer, and she calls
18 Maria.

19 Q. And if you talked to your lawyer about it,
20 you talked on an open line?

21 A. No, I didn't.

22 Q. How would your lawyer know what you were
23 talking about?

24 A. It was secure, the line. It was
25 privileged phone calls to my daughter.

1 Q. But you could have called Agent Acee and
2 said, "I need to talk to you immediately. Come
3 here"?

4 A. I notified my lawyer and told her to do
5 it.

6 Q. Nothing happened?

7 A. No.

8 Q. And it wasn't until you were aware that
9 Jerry Montoya had been busted that you wrote a
10 letter saying, "Hey, you guys should really get on
11 top of this"?

12 A. No, the letter was actually written a
13 couple weeks before. It was in an envelope, sealed
14 envelope, going to my lawyer, and they shouldn't
15 have opened it. They shook us down and found that
16 letter. That's how it happened. And they could
17 verify that.

18 Q. Right. So let's explore this a little bit
19 because I'm a little confused. You said you wrote a
20 sealed letter?

21 A. Yes.

22 Q. Before Mr. Montoya was busted in this
23 after?

24 A. Exactly, yes. Before he got busted, I had
25 already wrote a journal, it was called a journal. I

1 wrote it, and my lawyer knew about it, and it was
2 going to be sent to her. But it wasn't -- I didn't
3 send it out right away, and when he got busted a
4 week later, or something, they came and shook
5 down -- when he left, they shook down, and that's
6 when they found that letter and the phone on the
7 same day.

8 Q. Sure, yeah, because they were looking for
9 the phone?

10 A. Yes.

11 Q. Now, if what you're saying to this jury is
12 true, how did your letter in the sealed envelope
13 describe Jerry Montoya getting busted two weeks in
14 the future?

15 A. Because that's -- I mean, well, yeah,
16 you're right. I'm sorry. I wrote it right after he
17 got busted, and put on there. I started writing it
18 before, and then when he got busted, that's when I
19 ended it, pretty much, because I figured that Bryan
20 Acee and them didn't want to mess with it right now,
21 or couldn't; they were too busy.

22 Q. Okay. So let me make sure this jury
23 understands this correctly. You didn't write a
24 sealed letter two weeks before Mr. Montoya was
25 busted.

1 A. I wrote a letter -- started writing it,
2 ended it when he got busted, and I sealed it to send
3 it to my lawyer. It was in a sealed envelope. And
4 when they shook down, they opened that envelope,
5 which they weren't supposed to, and they found that
6 letter, and that's how it got out.

7 Q. That letter that you had in your
8 possession?

9 A. In my possession?

10 Q. That letter that went nowhere?

11 A. It went nowhere, yes. It was supposed to
12 go to my lawyer.

13 Q. Speaking of which, it's -- this letter,
14 the letter that went nowhere, sounds a little bit
15 like this Javier Molina paperwork that you've talked
16 about today on direct examination. Do you remember
17 that?

18 A. Yes.

19 Q. You said somebody sent you Molina
20 paperwork in the mail?

21 A. Yes.

22 Q. Would it surprise you to know that that's
23 the first time I ever heard about it?

24 A. First time you ever heard about what?

25 Q. You getting Molina paperwork in the mail.

1 A. Yes, it would surprise me.

2 Q. Okay. But -- we can do this again. When
3 you met with the FBI on December 17, 2015, you
4 didn't mention anything about getting Molina
5 paperwork in the legal mail, did you?

6 A. Yes, I did.

7 Q. You did?

8 A. Yes.

9 MR. LOWRY: May I approach, Your Honor?

10 Q. Would you please point out to the jury
11 where you talked to the FBI about getting Javier
12 Molina's legal paperwork in your mail?

13 A. It doesn't say on here, but I know I said
14 it.

15 MR. LOWRY: May I approach, Your Honor?

16 THE COURT: You may.

17 BY MR. LOWRY:

18 Q. And again, the FBI gave you a chance to
19 review this, right, and make edits to it?

20 A. Yes.

21 Q. And you didn't say, "Hey, wait a second,
22 you forgot to put down what I told you about" --
23 that didn't happen. You didn't provide them with
24 those edits, never got in that report. The same
25 thing with your report on January 21, 2016. Would

1 you like to see it?

2 A. Would I like to see the report?

3 Q. Sure.

4 A. Yes.

5 MR. LOWRY: May I approach, Your Honor?

6 THE COURT: You may.

7 A. Yeah.

8 BY MR. LOWRY:

9 Q. Is it there?

10 A. No.

11 Q. And again, you got this report to edit;
12 correct?

13 A. Correct.

14 Q. And you didn't say, "Hey, wait, you forgot
15 that little important part"?

16 A. No.

17 Q. But it's important enough for you to
18 testify about it on direct examination, wasn't it?

19 A. Yes.

20 MR. LOWRY: May I approach again, Your
21 Honor?

22 THE COURT: You may.

23 BY MR. LOWRY:

24 Q. And when you met with the FBI on September
25 15, 2016, did you say anything about getting the

1 Molina paperwork in the mail?

2 A. No.

3 Q. And you had an opportunity to edit that
4 report, didn't you?

5 A. Yeah.

6 Q. And you didn't say, "Hey, there is really
7 critical information you guys need to know, but it's
8 not in this report"?

9 A. No.

10 Q. Same thing for December 2, 2016, when you
11 were visited by the FBI?

12 A. Yes.

13 Q. You didn't tell them anything about it, or
14 they just forgot to edit their report for them and
15 say, "You're still missing critical information you
16 need to know to solve this case"?

17 A. No.

18 Q. And you'd seen every report that the FBI
19 filed?

20 A. Um-hum.

21 Q. And you didn't correct it one time?

22 A. No. I figured it was in there already,
23 because the only time I got to review it was just
24 recently, and I was looking at other stuff.

25 Q. What other stuff were you looking at?

1 A. Other stuff that I said.

2 Q. Pardon me?

3 A. Things that I said in there that -- what I
4 couldn't remember.

5 Q. You were looking at other material within
6 those reports?

7 A. Yes.

8 Q. Now, Mr. Castellano talked to you a little
9 bit about your criminal history, and I want to back
10 up and revisit some of that; is that okay?

11 A. All right.

12 Q. You talked about your relationship. You
13 called her Cheryl, but her name is Cheryl Tiller,
14 right?

15 A. Yes.

16 Q. And you met Cheryl Tiller when you got
17 paroled?

18 A. Right.

19 Q. And you got paroled in 1998?

20 A. Yes.

21 Q. And at that time you were selling a lot of
22 drugs?

23 A. Yes.

24 Q. And you were selling a lot of crack
25 cocaine?

1 A. Right.

2 Q. And you met Ms. Tiller?

3 A. Yes.

4 Q. She was a sergeant with BCSO or APD?

5 A. APD.

6 Q. APD. And she actually introduced you to
7 even more sources for drugs; correct?

8 A. That's correct.

9 Q. And you took advantage of those sources?

10 A. Yes.

11 Q. To sell drugs?

12 A. Yes.

13 Q. And you talked about living the good life?

14 A. That's correct.

15 Q. And you got up and you would drink every
16 day and you would use cocaine or use whatever you
17 had, and you still had a job that you kept, right,
18 to make probation and parole happy?

19 A. Yes.

20 Q. But I mean, you were living pretty fast
21 and loose?

22 A. Right.

23 Q. You were stealing cars?

24 A. Yes.

25 Q. And she turned a blind eye to all of that?

1 A. Yes.

2 Q. And the relationship went on for a bit of
3 time; correct?

4 A. Yes.

5 Q. And she was your lover?

6 A. Yes.

7 Q. And you shot her in the face?

8 A. Yes.

9 Q. Three times?

10 A. I shot three times. I don't know how many
11 times I hit her.

12 Q. Pretty close range?

13 A. Yes.

14 Q. Now, she wasn't armed?

15 A. No.

16 Q. You had a gun?

17 A. Yes. Hers.

18 Q. You were concerned, according to your
19 direct examination testimony, that you felt like
20 something was going on and you were being set up?

21 A. That's right.

22 Q. So you -- let's get this right. So you
23 were at your apartment; right?

24 A. Yes.

25 Q. She says, "Leave your ID here." You

1 thought that was weird.

2 A. Yes.

3 Q. And you still -- you ignored that, and you
4 jump in the car with her, the truck?

5 A. Right.

6 Q. And you drove out to the Petroglyph
7 monuments?

8 A. Yes.

9 Q. And you guys were going to go parking, as
10 far as you knew?

11 A. Right.

12 MS. JACKS: Sorry. We're having trouble
13 hearing the answers.

14 THE COURT: Would you either pull your
15 chair up, or see if you can pull the microphone up?
16 There you go.

17 BY MR. LOWRY:

18 Q. And you were still using drugs at that
19 time?

20 A. Yes.

21 Q. And you were getting a little paranoid?

22 A. Well, that night I wasn't using drugs, no.
23 I was drinking only.

24 Q. You were drinking only?

25 A. It was a voting night, so they didn't

1 start selling liquor till midnight, or past 7:00. I
2 think it was past 7:00, or something like that. I
3 can't remember. But we didn't get to buy alcohol
4 till late at night.

5 Q. Okay. So you remember writing your little
6 history of the SNM?

7 A. Um-hum.

8 Q. Do you remember writing, "I barely started
9 drinking and was hardly buzzed"?

10 A. Yes.

11 Q. So that's -- but when I was talking about
12 being paranoid, I wasn't talking about being
13 paranoid from the drug use. You just thought the
14 whole situation was strange.

15 A. Yeah, I started thinking that I was being
16 set up.

17 Q. Now, you went to Petroglyph National
18 Monument, you parked the car, you give her a hug;
19 right?

20 A. Um-hum.

21 Q. You reach around her while you're hugging
22 her and you unholster her pistol.

23 A. Right.

24 Q. And you put it in your waistband or --

25 A. Yeah, in the back, yes.

1 Q. And you guys grabbed a couple of beers,
2 grabbed a couple of Coronas; right?

3 A. Yes.

4 Q. And got out of the car just to hang out?

5 A. Right.

6 Q. It's about midnight, just to relax?

7 A. Exactly.

8 Q. But your feelers are going through the
9 roof?

10 A. Um-hum. Yes.

11 Q. And you hear a car in the distance; right?

12 A. Well, I seen the headlights. I didn't
13 really hear it. I just seen the headlights. And
14 then they turned off.

15 Q. And that made you even more nervous?

16 A. Right.

17 Q. And at that point, you basically point the
18 gun at her?

19 A. I didn't point it at her right away. She
20 came, asked me for it a couple of times, I told her,
21 "No, I'm not going to give it to you."

22 And then she tried to get it from me and
23 that's when I pointed it at her.

24 Q. It was her gun?

25 A. It was her gun, yes.

1 Q. And you fire a shot in the air just to
2 scare her?

3 A. Yes.

4 Q. But you don't think she was scared by
5 having a gun pointed at her?

6 A. The only thing she was worried about is
7 cleaning it.

8 Q. You don't think she was worried about you
9 pointing a gun at her?

10 A. Well, I couldn't say what she was worried
11 about. But at that point -- but I know when I shot
12 in the air, the only thing she was saying is, "Now
13 I'm going to have to clean that."

14 Q. Okay. So she was worried that you had
15 soiled her firearm?

16 A. Yes.

17 Q. She didn't sound like she was worried that
18 something else was going to happen, other than you
19 guys having a couple of beers?

20 A. She seemed at edge about something. I
21 don't know if it was because of me holding the gun,
22 or what else, but it was making me paranoid.

23 Q. That she was nervous because you had a gun
24 pointed at her, and that made you nervous?

25 A. Like I said, I didn't have it pointed at

1 her until later on, when she was about to try to get
2 it from me.

3 Q. Was she -- according to you, she said that
4 you'd better pull the trigger because she will make
5 sure that you were dealt with?

6 A. Yes.

7 Q. You didn't know exactly what she meant,
8 did you?

9 A. No.

10 Q. I mean, she was a law enforcement officer.

11 A. And she did tell me that she killed her
12 ex-boyfriend. I thought she was just bullshitting.

13 Q. Right.

14 A. But she wasn't.

15 Q. But you had her unarmed in a remote place?

16 A. Right.

17 Q. There is nothing -- I want to make sure I
18 understand this -- nothing to prevent you from
19 getting in that truck and driving away?

20 A. That's correct.

21 Q. But you shot her in the face?

22 A. Yes.

23 Q. And nobody figured out for three years?

24 A. For three years, no.

25 Q. Now, for that, I think you told the jury

1 you got life in prison plus, what, six years on
2 that?

3 A. Six years, yeah.

4 Q. All to run consecutive, so the six years
5 comes after you serve your life sentence?

6 A. That's correct.

7 Q. So the conditions of confinement in the
8 Department of Corrections -- that was going to go
9 for a long time, wasn't it?

10 A. I'm not too sure how long it was going to
11 be, but it was bad when it was.

12 Q. So you were on your sentence for life plus
13 six?

14 A. That's right.

15 Q. That's a long time, isn't it?

16 A. Yes.

17 THE COURT: Mr. Lowry, would this be a
18 good time for us to take our lunch break?

19 MR. LOWRY: Sure, Your Honor.

20 THE COURT: We'll be in recess for about
21 an hour. All rise.

22 (The jury left the courtroom.)

23 THE COURT: The Marshal Service have
24 opened an investigation and have spoken with Ramona
25 Becker, juror number 16. I'll keep you posted if I

1 learn anything.

2 MS. JACKS: Your Honor, I didn't bring
3 this up earlier, but perhaps she should be advised
4 not to speak about the situation with other jurors.

5 THE COURT: Okay. I'll have Ms.
6 Standridge speak to her about that. Is that all
7 right?

8 MS. JACKS: That's fine.

9 MR. VILLA: Your Honor, I imagine they'll
10 do this, but I assume they're going to preserve the
11 post or the message, whatever she received.

12 THE COURT: Well, I don't know. I'll find
13 out what they're doing and I'll keep you posted on
14 it.

15 MR. VILLA: Maybe we can get a copy of it,
16 you know, attorneys eyes only. Because I think that
17 might inform what request we make of the Court.

18 THE COURT: Well, if y'all see Mickendrow,
19 you can speak to him about that. I don't think he's
20 conducting the investigation. But I'll talk to Ms.
21 Standridge.

22 All right. See y'all in about an hour.

23 MR. LOWRY: Your Honor, could you admonish
24 the witness quickly?

25 THE COURT: Mr. Martinez, don't -- you're

1 on the stand, so don't speak to anybody about your
2 testimony.

3 THE WITNESS: All right.

4 (The Court stood in recess.)

5 THE COURT: Let's go on the record.

6 Deputy Mickendrow can give us a briefing, but I
7 don't think he knows any more than what we just gave
8 you before lunch. He does have a picture of the
9 screen, but he can't release it to us until he works
10 it up through his command. So we'll see what
11 response he gets, but -- and Ms. Standridge did talk
12 to Ms. Becker, and Becker understood that she
13 shouldn't talk to the jurors about it. And she said
14 she didn't want anybody else to be alarmed about it.
15 So that should be okay.

16 All right. Is there anything else we need
17 to discuss while we're waiting? Mr. Villa?

18 MR. VILLA: Your Honor, I asked Deputy
19 Mickendrow about it, and he said a couple of things
20 I just wanted to add -- I think he's here, if I'm
21 wrong -- is that the investigation is closed; they
22 didn't think it was anything suspect, that it was
23 inadvertent and not related. And he had indicated
24 to me that, in order to get -- for us to get the
25 picture, we might have to go through FOIA or some

1 other channels. So I guess I would ask the Court to
2 order it, because that may expedite things, and then
3 he can go through his appropriate channels
4 indicating that there is a court order.

5 THE COURT: Well, I think you were going
6 to -- you were just going to check with your
7 superiors to see if you could release it. Isn't
8 that what you were going to do, Deputy Mickendrow?

9 DEPUTY MICKENDROW: Judge, so typically,
10 we don't release any internal reports. And the
11 picture is a part of the internal report. If the
12 Court requests the report, based on the fact that
13 it's part of the court proceedings, I could put it
14 up through our Office of General Counsel. But
15 typically, the standard protocol is to request all
16 of that information through a FOIA request.

17 THE COURT: Well, why don't you tell the
18 counsel that the Court would like to have it for a
19 picture of the court proceedings, since it involved
20 a juror and, you know, we want to make sure that
21 nobody is alarmed or fearful of it. So see if that
22 works. If it doesn't work, then --

23 MR. MICKENDROW: Just to clarify, Judge,
24 that's just the picture; not any of the attached
25 reports; correct?

1 THE COURT: What are the attached reports?
2 Just your reports?

3 MR. MICKENDROW: Yes, Judge. That would
4 be our internal investigation as far as what we did,
5 what procedures we took.

6 THE COURT: I think what they're wanting
7 is a picture of the face page, so --

8 MR. MICKENDROW: A copy of that. I will
9 put that up and see if we can't provide that to the
10 Court.

11 THE COURT: See if we can get that.

12 All right. All rise. We're going to
13 bring in the jury, and then I'll bring in the
14 witness.

15 (The jury entered the courtroom.)

16 THE COURT: Well, sorry, I had you waiting
17 back there a little bit longer than usual. Because
18 I took breaks earlier, I messed up everybody's
19 lunches, so it took a while to get everybody back
20 together. So it's all my fault for taking a little
21 bit earlier lunch break today. So I appreciate your
22 patience.

23 We'll wait -- I brought y'all in before I
24 brought in Mr. Martinez, so we'll just wait here
25 until Mr. Martinez gets back.

1 All right. Mr. Martinez, I'll remind you
2 that you're still under oath.

3 THE WITNESS: All right.

4 THE COURT: Mr. Lowry, if you wish to
5 continue your cross-examination of Mr. Martinez, you
6 may do so at this time.

7 MR. LOWRY: Thank you, Your Honor, I do.

8 THE COURT: Mr. Lowry.

9 BY MR. LOWRY:

10 Q. Good afternoon, Mr. Martinez.

11 A. Good afternoon.

12 Q. Mr. Martinez, when we left, we had just
13 finished talking about your judgment and sentence in
14 the Cheryl Tiller matter. And I believe you agreed
15 with me you got a life sentence plus six years?

16 A. Yes.

17 Q. Now, when you were arrested for that
18 murder, you were in the BCDC lockup; correct?

19 A. Yes.

20 Q. And is that where you were in the pod when
21 they brought in Matthew Cavalier?

22 A. No, it wasn't in lockup. It was GP,
23 general population. But first I was in lockup, and
24 then they let me out.

25 (Ms. Fox-Young entered the courtroom.)

1 Q. Being arrested on that murder is what
2 precipitated you being at the BCDC?

3 A. Yes.

4 Q. And you were also housed at the BCDC with
5 other people that you knew?

6 A. Yes.

7 Q. And one of them would have been Gerald
8 Archuleta?

9 A. Yes.

10 Q. And Gerald Archuleta was known by the name
11 Styx?

12 A. Yes.

13 Q. And you would have been there with which
14 Silva? Was it Rabs?

15 A. Rabs.

16 Q. And his name was Paul Silva?

17 A. Samuel Silva.

18 Q. Samuel Silva. And was there anybody else
19 affiliated with the SNM that was there?

20 A. Yes, Fuzz, Kelly Mercer, Francisco
21 Villalobos, and that's all I remember.

22 Q. Was Kelly Mercer's brother, Johnny Mercer,
23 there?

24 A. Yes. Yeah, he was there. But he wasn't
25 SNM at the time, I don't believe.

1 Q. But you were all in the same pod?

2 A. Yes.

3 Q. And just so the jury is clear, a pod is a
4 living unit, sort of a dormitory-style situation?

5 A. Yes.

6 Q. And when Mr. Cavalier walked into the pod,
7 everybody knew that that was trouble?

8 A. Yes.

9 Q. And this sort of goes back to the comment
10 I believe you made in your letter to Adam Vigil,
11 although you were talking about the Department of
12 Corrections?

13 A. Correct.

14 Q. How prison administration officials do
15 things that put people in jeopardy?

16 A. Yes.

17 Q. And you guys knew this is not a good
18 situation?

19 A. Right.

20 Q. Now, you worked with Gerald Archuleta and
21 Silva to murder Mr. Cavalier?

22 A. Yes.

23 Q. And this was the gentleman I believe you
24 described in your earlier testimony as the guy that
25 essentially saved your life?

1 A. That's correct.

2 Q. Now, I don't want to hop around too much,
3 but you talked about the rules or rules of SNM.
4 Matthew Cavalier broke the rules to save your life?

5 A. Yes.

6 Q. But you didn't think anything of it; you
7 didn't care to break the rules to save his life?

8 A. Well, to say I didn't think about it would
9 be a lie. I thought about it. It just -- I didn't
10 do it.

11 Q. Okay. He could have thrown a cup of ice
12 at the guard or something, but --

13 A. I could have told him the same thing that
14 he told me, and I chose not to.

15 Q. And in fact, there was a concerted effort
16 to do just the opposite, to make him feel like he
17 was safe and at home?

18 A. That's correct.

19 Q. And you guys said, "Hey, let's party," and
20 you shared some heroin?

21 A. No, we actually just smoked a cigarette.

22 Q. You didn't do heroin earlier in the
23 evening?

24 A. No, sir.

25 Q. Did Mr. Archuleta do heroin with him

1 earlier in the evening?

2 A. No. We were actually hungover from doing
3 lots of heroin before, a week before. But at the
4 time we weren't high.

5 Q. But there was a plan to make him feel at
6 ease around you guys?

7 A. Yes.

8 Q. And did Mr. Archuleta make Mr. Cavalier
9 feel like he had gotten a pass?

10 A. Yes.

11 Q. And that was to put him at ease?

12 A. Yes.

13 Q. That was actually to make him more
14 vulnerable so you guys could attack him?

15 A. Right.

16 Q. Which happened.

17 A. Right.

18 Q. And you guys made it look, after he was
19 killed, like he was asleep?

20 A. Yes.

21 Q. Like he was covered up in the blanket in
22 bed?

23 A. Yes.

24 Q. And that effort to conceal his passing was
25 so effective the prison guards never even found out

1 about it?

2 A. That's right.

3 Q. Until somebody on God's Pod called a news
4 station?

5 A. Right.

6 Q. And that news station called the jail
7 officials and said, "Hey, you guys got a dead body
8 inside your jail."

9 A. Yes.

10 Q. Now, you testified on direct that you took
11 a plea agreement in order to save or spare Mr.
12 Silva?

13 A. Yes.

14 Q. Can we pull up Government's Exhibit 434?
15 Can we go to Bates 8985?

16 Now, you said that you took a plea in this
17 case. By the time you pled guilty for the Matthew
18 Cavalier homicide, you'd already pled guilty for the
19 Tiller homicide?

20 A. I got found guilty, yes.

21 Q. You were found guilty?

22 A. Yes.

23 Q. By a jury?

24 A. Yes.

25 Q. Did you testify in that case?

1 A. No, sir.

2 Q. But by the time you were in front of the
3 Court on a plea offer in the Cavalier, is it fair to
4 say that this was a really generous plea offer?

5 A. Yes.

6 Q. And so, in fact, if you look at page 2 of
7 your plea offer, highlight the "Further ordered."
8 For this murder, the judge ran your sentence
9 concurrently with the life sentence you were serving
10 in the Tiller murder?

11 A. Yes.

12 Q. So as a practical reality, you did not get
13 one extra day in jail for the murder of Matthew
14 Cavalier, did you?

15 A. No, sir.

16 Q. It was a freebie?

17 A. Yes.

18 Q. So there was no reason not to take that
19 plea agreement, was there?

20 A. No.

21 Q. Now, working with Gerald Archuleta killing
22 Matthew Cavalier caused a bit of problems for Gerald
23 Archuleta, didn't it?

24 A. What kind of problems?

25 Q. Well, they're twofold: One is, Mr.

1 Archuleta encouraged you to take a plea, didn't he,
2 early on?

3 A. Well, he wanted me to. But I didn't.

4 Q. And you didn't want to take a plea because
5 you hadn't even seen the discovery; correct?

6 A. That's correct.

7 Q. And you were, like, "Wait a second. Until
8 I see the paperwork, I'm not doing anything"?

9 A. That's right.

10 Q. And they had at least one, if not more,
11 meetings with all the defense attorneys to try to
12 convince you to take a plea?

13 A. That's right.

14 Q. And you said, "Not going there"?

15 A. Yeah, right.

16 Q. And it wasn't until you finally got the
17 paperwork that you decided to plea?

18 A. It wasn't until we were about to go to
19 trial that I took the plea.

20 Q. Right. But you ultimately received the
21 discovery, the paperwork, for that; right?

22 A. Yes.

23 Q. And that paperwork, when you read it, was
24 a little disappointing, wasn't it?

25 A. Yes.

1 Q. And you learned at that time that Gerald
2 Archuleta had snitched you out?

3 A. Right.

4 Q. Because he told the police, "Why are you
5 looking at me? I'm not a cop killer."

6 A. That's right.

7 Q. And that's what's called a dry snitch;
8 right?

9 A. Yes.

10 Q. And a dry snitch is where: Wink, wink,
11 nudge, nudge, your guy is over there?

12 A. Right.

13 Q. So he was talking about you?

14 A. Yes.

15 Q. And that didn't go over well, did it?

16 A. No.

17 Q. And frankly that violated the rules of the
18 SNM?

19 A. Yes.

20 Q. And according to your direct testimony, if
21 somebody snitches you out, you have an obligation to
22 kill that person?

23 A. That's right.

24 Q. But you didn't kill Gerald Archuleta?

25 A. Never got close to each other after that,

1 never.

2 Q. Because you were in prison?

3 A. I was in prison. He got out. Every time
4 he came back to prison, he was on lockdown, so he
5 would never be out after that.

6 Q. And it causes -- but that violated the
7 spirit of the code, if you will?

8 A. Yes.

9 Q. Now, it also created a second host of
10 problems, because if I understood that case
11 correctly, Gerald Archuleta and the folks in
12 there -- you guys quickly figured out that Kelly
13 Mercer had turned state's evidence against you guys?

14 A. Yes.

15 Q. You testified that he went to an interview
16 and never came back?

17 A. Right.

18 Q. And that raised a great deal of suspicion
19 that was confirmed when you read the discovery?

20 A. That's right.

21 Q. So there was an effort put out to kill
22 Kelly Mercer for that?

23 A. Yes.

24 Q. And that's where Mr. Archuleta tried to
25 get in touch with Julian Romero to kill Kelly

1 Mercer?

2 A. Yes.

3 Q. But Mr. Romero was having too much fun
4 sleeping with Gerald Archuleta's wife to pull that
5 off?

6 A. Yes.

7 Q. And that created a whole second bit of
8 problems for everyone?

9 A. Right.

10 Q. Now, how did that impact the SNM
11 politically?

12 A. It brought a little bit of division with
13 the followers of Gerald, who didn't know about his
14 dry snitching against people that were on Julian's
15 side, for instance, or Wild Bill. There was a bunch
16 of division.

17 Q. Right. So for lack of a better way of
18 saying it, it just kind of broke up?

19 A. It didn't really break up. There was this
20 certain group of people that didn't agree with Styx,
21 and some -- the ones that agreed with Styx didn't
22 agree with Julian, and like that. But it wasn't
23 broken up. We were still together.

24 Q. Right. I don't mean breaking up like the
25 whole thing disintegrated. But there were subgroups

1 within the umbrella of the SNM?

2 A. Yeah, there was basically disagreements.
3 But when it all came down to it, the guy that
4 disagreed with the other guy would still kill with
5 each other, if we have to.

6 Q. Right, against the Los Carnales?

7 A. Or whoever.

8 Q. Against the Aryan Brotherhood?

9 A. Yes.

10 Q. Or against, what was it, the Supreme
11 White --

12 A. Supreme White Power.

13 Q. Right, so Supreme White Power. So if
14 there is an external threat, you guys would handle
15 it?

16 A. Right.

17 Q. But within the political situation of the
18 group, there were lots of different camps?

19 A. Yeah. There was disagreements, yeah.

20 Q. With people that just didn't really get
21 along with each other, necessarily?

22 A. Right.

23 Q. And in fact, sometimes it was so bad they
24 wanted to kill each other?

25 A. That's right.

1 Q. And sometimes they actually did kill each
2 other.

3 A. Well, I wouldn't go there. I don't think
4 nobody killed anyone for Styx. And when it came
5 over Julian, but...

6 Q. You were aware that Frederico Munoz tried
7 to shoot Julian Romero?

8 A. Yeah, but you were saying about murder,
9 and I don't think anybody got murdered.

10 Q. Right. But he made a good-faith effort to
11 kill him; just missed?

12 A. Right, yes.

13 Q. In that sense. You also testified on
14 direct talking about political dissension and people
15 not getting along, that when Mr. Baca came back to
16 Southern, there were elections held?

17 A. Right.

18 Q. And the people in blue pod didn't want him
19 around, didn't want him to be a leader?

20 A. That's right.

21 Q. And they didn't support him or go for him?

22 A. They didn't vote, period. They didn't
23 want nothing to do with those voting.

24 Q. So they were just persona non grata?

25 A. Yes.

1 Q. And that's exactly why Mr. Baca ended up
2 being kited out to Level 6?

3 A. Yes.

4 Q. While we're talking about SNM politics, if
5 I understood your direct testimony correctly, you
6 said that there was a conversation that you had with
7 Mr. Baca and others about basically reorganizing the
8 SNM?

9 A. Yes.

10 Q. And you actually -- there was an effort
11 made to sort of stop killing each other, stop
12 rumors?

13 A. Yes.

14 Q. And sort of bring back the brotherhood of
15 what it meant to be an organization?

16 A. Right.

17 Q. And that was something that was discussed?

18 A. Yes.

19 Q. And he wanted more solidarity amongst
20 people that were part of SNM?

21 A. Yes.

22 Q. And that is sort of what you described
23 when you described going to the Old Main for the
24 first time, is it not?

25 A. Yeah.

1 Q. When you were there, you were a young
2 kid -- pardon me -- but you were, what, 19?

3 A. 21.

4 Q. And you didn't really know what was going
5 on?

6 A. Right.

7 Q. And as soon as you got there, this other
8 gang, the Los Carnales, I believe you said it was
9 Mike --

10 A. Dallas.

11 Q. -- Dallas, wanted to kill you on the spot?

12 A. Yeah.

13 Q. And the folks aligned with SNM realized,
14 "Here is a young guy who is in harm's way"; right?

15 A. Yes.

16 Q. And actually reached out to protect you?

17 A. Yes.

18 Q. And they did that?

19 A. Yes.

20 Q. And you weren't a member?

21 A. No.

22 Q. They just saw somebody who could get
23 seriously hurt?

24 A. Pretty much, yes.

25 Q. And they saved your life?

1 A. Yes.

2 Q. Now, I just want to talk about the charges
3 in this case real briefly, starting with -- well, we
4 talked about the Julian Romero allegation. You're
5 aware that Gerald Archuleta called that hit to have
6 Julian Romero killed?

7 A. Yes.

8 Q. And Gerald Archuleta sincerely wanted him
9 dead?

10 A. Yes.

11 Q. And that's what you know about that?

12 A. Right.

13 Q. Okay. Now, with regard to the Javier
14 Molina case, you testified about getting this
15 paperwork in the legal mail.

16 A. Yes.

17 Q. And if I understood you correctly, you
18 felt like the paperwork was a bit like kryptonite;
19 you didn't really want it around you?

20 A. Right.

21 Q. Why didn't you simply flush it down the
22 toilet? I mean, it's right there.

23 A. Being in prison 20 years with stuff like
24 that, I don't think like that. I mean, I should
25 have, yeah, but I didn't.

1 Q. So it's just something that you think
2 never crossed your mind?

3 A. No.

4 Q. Now, let's talk about the charge you pled
5 guilty to, the Marcantel allegations. I believe I
6 understood you on direct testimony that you had
7 never talked to Mr. Baca about Mr. Marcantel ever.

8 A. Right.

9 Q. And if I understood you correctly, you
10 learned about -- even the hit, you were approached
11 by Eric Duran in early 2015 to kill Dwayne
12 Santistevan.

13 A. Yes.

14 Q. And at the beginning, there wasn't even
15 any mention of Mr. Marcantel.

16 A. No.

17 Q. And it was Eric Duran that brought up the
18 whole idea of killing Mr. Marcantel to you.

19 A. Yes.

20 Q. And that wasn't something you thought of
21 before.

22 A. No.

23 Q. And did he use the murder of the Secretary
24 of Corrections in Colorado as an example of sort of
25 the mythology or the reputation that could enhance

1 the SNM if you guys pulled off that hit?

2 A. Well, that was actually coming from Pup.
3 He said that he was in contact with Pup at the time.

4 Q. But you never talked to Pup.

5 A. No, I never talked to Pup.

6 Q. And as far as you know, you only know what
7 Eric Duran told you; right?

8 A. Right.

9 Q. And you -- and Eric Duran told you that
10 Mr. Baca wanted to kill Mr. Marcantel.

11 A. Yes.

12 Q. That's what you told this jury this
13 morning.

14 A. Yes.

15 Q. And in fact -- can we bring up the Looney
16 exhibit, Government's Exhibit 273? Bear with me for
17 a second.

18 In this letter you talked with Mr.
19 Castellano about on direct, you talked about a list.
20 And Mr. Duran had told you about this hit list;
21 correct?

22 A. Yes.

23 Q. And Mr. Duran -- you testified to this
24 jury that the viejo spoke with you about this list;
25 right?

1 A. Yes.

2 Q. And this is something that Eric Duran
3 talked to you about?

4 A. Right.

5 Q. You never talked to Mr. Baca about this.

6 A. Right.

7 Q. And you testified on direct that Eric
8 Duran told you Anthony Baca wanted to add the
9 Secretary of Corrections to this list.

10 A. Yes.

11 Q. And so Eric Duran convinced you that
12 killing the Secretary of Corrections would be a
13 great idea.

14 A. Yes.

15 Q. Okay. And he did that by using Pup's
16 name?

17 A. Yes. Well, I believed him because he was
18 out there where we -- we knew about his anger
19 towards the administration. So I knew Pup trusted
20 Crazo, so I believed him.

21 Q. You believed Crazo?

22 A. Right.

23 Q. But you had never talked to Anthony Baca
24 about Mr. Marcantel at all?

25 A. No.

1 Q. And you trusted Crazo?

2 A. Yes.

3 Q. Now, you told this jury earlier on that
4 you believed Mr. Baca wanted to kill the Secretary
5 of Corrections because Mr. Baca understood that the
6 Secretary called him a crybaby?

7 A. Yes.

8 Q. And that's something that had bothered
9 you; right?

10 A. Yes, all of us.

11 Q. Right. Nobody believed it.

12 A. Believed what?

13 Q. Nobody believed that Mr. Baca was a
14 crybaby.

15 A. Right.

16 Q. And everybody was offended when he
17 disparaged Mr. Baca?

18 A. Yes.

19 Q. That it was disrespectful?

20 A. Yes.

21 Q. Uncalled for?

22 A. Yes.

23 Q. And beneath the dignity of the Secretary
24 of Corrections to even say something that stupid?

25 A. Yes.

1 Q. Do you recall, from looking at the
2 tablet -- you know many of those conversation were
3 recorded with Mr. Duran.

4 A. Yes.

5 Q. Do you recall the conversation you had
6 with Mr. Duran where you both discussed the fact
7 that Mr. Baca never understood that the Secretary of
8 Corrections called him a crybaby?

9 A. I can't remember all those conversations.

10 Q. Because that conversation with director --
11 well, the conversation with Secretary of Corrections
12 Marcantel happened roughly within a week after the
13 Molina murder; right?

14 A. Yeah.

15 Q. About March 12, 2014?

16 A. Yes.

17 Q. And when Secretary Marcantel addressed you
18 in a room with all the SNM members, Eric Duran was
19 in that room?

20 A. Yes.

21 Q. And he told you guys, "Hey, Baca shipped
22 out crying"; right?

23 A. Yes.

24 Q. So Mr. Baca is gone. You hadn't talked to
25 Mr. Baca?

1 A. No.

2 Q. And Eric Duran led you to believe that he
3 had?

4 A. Yes.

5 MR. LOWRY: So, Your Honor, can we -- we'd
6 like to move to play Defendants' Exhibit Y3.

7 MR. CASTELLANO: I'm not sure that one has
8 been admitted. I don't believe it has been.

9 MR. LOWRY: I'm going to move to admit it.

10 THE COURT: Is there going to be an
11 objection to that?

12 MR. CASTELLANO: I don't know what it is,
13 Your Honor. Your Honor, I have no objection to its
14 admission.

15 THE COURT: All right. Anyone else have
16 an objection?

17 Not hearing any objection, Defendants'
18 Exhibit Y3 will be admitted into evidence.

19 (Defendants' Exhibit Y3 admitted.)

20 BY MR. LOWRY:

21 Q. Mr. Martinez, I want to set this up for
22 you briefly. As you pointed out earlier, Mr. Duran
23 was housed in a cell between Robert Martinez and
24 yourself; correct?

25 A. Yes.

1 Q. And you were housed at Level 6 of the PNM
2 North; correct?

3 A. Yes.

4 Q. And do you remember what pod it was?

5 A. X pod.

6 Q. X pod?

7 A. Yes.

8 Q. So this is a clip that was taken about
9 March 27 of 2015.

10 MR. LOWRY: And Your Honor, I'm just going
11 to place this transcript on the Elmo just to assist
12 the jury, if I may.

13 THE COURT: You may.

14 BY MR. LOWRY:

15 Q. This is a transcript that was prepared by
16 the United States. I don't know if this is going to
17 work this way. Can we patch it directly through?

18 (Tape played.)

19 Q. Is that your voice talking about chess
20 games?

21 A. Yes.

22 Q. So that was you and Crazo talking about
23 Mr. Baca, not knowing at all that the Secretary of
24 Corrections had called him a crybaby?

25 A. Yes.

1 Q. So your testimony that Mr. Duran told you
2 that Anthony Baca wanted Marcantel added to the hit
3 list because he called him a crybaby -- you both
4 knew that that hadn't happened?

5 A. Right.

6 Q. So that couldn't be right, could it?

7 A. Well, not at that time.

8 Q. You'd already -- this is before you wrote
9 the letter?

10 A. That recording is before I wrote the
11 letter?

12 Q. Yes, sir.

13 A. Yeah, so, eventually he did find out.

14 Q. Well --

15 A. According to what Crazo told me.

16 Q. On the same day?

17 A. No. But eventually he did.

18 Q. Now, it was Mr. Duran's idea to draft the
19 letters?

20 A. To draft them?

21 Q. Well, yeah. He said, "Hey" -- well, he
22 approached you; right?

23 A. Yes.

24 Q. And said, "Let's kill Dwayne Santistevan"?

25 A. Yes.

1 Q. And then he approached you and said, "Hey,
2 let's do something even bigger, badder, and better.
3 Let's kill the Secretary of Corrections"?

4 A. Yes.

5 Q. His idea both times?

6 A. Yes.

7 Q. He used other people's names to convince
8 you it was a good idea?

9 A. Yes.

10 Q. He used other instances where other
11 Secretaries of Correction had been killed to
12 convince you it was a good idea?

13 A. Yeah.

14 Q. And he basically convinced you, "Hey,
15 let's do this, it's a swell idea"; right?

16 A. Yes.

17 Q. And he said, "Hey, my girlfriend can
18 smuggle the letters out"; right?

19 A. Yes.

20 Q. So you don't even need to write it in
21 code; just write it in big block letters; right?

22 A. Yes.

23 Q. And you and Robert Martinez actually got
24 in a bit of a disagreement about even that idea?

25 A. Yes.

1 Q. Because Robert said he'd gone to talk to
2 the STIU guys; right?

3 A. Yes.

4 Q. And he said, "It would be fine with me if
5 they carry you and the Secretary out in a pine box."

6 A. Right.

7 Q. Because Robert wanted to get out of the
8 severe conditions of confinement that you guys were
9 living in?

10 A. He was trying to get out of state; that
11 was his --

12 Q. Right, he wanted to be shipped out of
13 state?

14 A. Yes.

15 Q. Where he'd be treated humanely?

16 A. Yes.

17 Q. So Robert was saying, "I'll preach it to
18 the world. I don't care. My whole goal is just to
19 get moved out of state."

20 A. Yes.

21 Q. But Eric Duran said, "Well, let's write
22 these letters and try to be a little bit more
23 clandestine about it and not broadcast it
24 everywhere."

25 A. Yes.

1 Q. And he could help you keep it a secret,
2 because he could courier the letters out of the
3 prison without anybody knowing about it?

4 A. Right.

5 Q. And so he had you write this letter?

6 A. Yes.

7 Q. And he told you what to put in it?

8 A. No, he didn't tell me what to put in it.

9 Q. He told you about the letters?

10 A. Yeah, he told me about Arthur Chavez, and
11 Arthur Chavez wrote me a letter himself.

12 Q. Right.

13 A. So --

14 Q. But it was his idea for the secretary?

15 A. Yes, yeah.

16 Q. And you went along with it?

17 A. Yeah.

18 Q. And so he said to you quite frequently,
19 "Hey, let's send these letters out"?

20 A. Yes.

21 Q. "And you give them to me and I'll take
22 care of it"?

23 A. Yes.

24 Q. And he actually said, "Don't even talk to
25 other people about it"?

1 A. Yes.

2 Q. Would you agree with me that he came up
3 with this idea -- I mean, you even told him, "Jeez."
4 I mean, he told you it was his idea; right?

5 A. Yes.

6 Q. And you agreed with him that it was his
7 idea?

8 A. Crazo's?

9 Q. Yes.

10 A. No, he never told me that it was his idea.

11 Q. Well, he was trying to say it was other
12 people's idea?

13 A. Yes.

14 Q. But you don't know that?

15 A. He told me it was coming from Pup.

16 Q. But you didn't know if that was true?

17 A. I believed him because he was privy to
18 that information.

19 Q. My question is: You didn't know that was
20 true?

21 A. No.

22 Q. You just believed him?

23 A. Yes.

24 Q. That was his plan?

25 A. Yes.

1 Q. And you said, "Wow, since you brought up
2 this plan, I've been fantasizing about it."

3 A. Yes.

4 Q. And you'd never fantasized about that
5 until Mr. Duran brought it up to you, had you?

6 A. I don't know about fantasizing, but I
7 hadn't thought about it until, you know -- the last
8 time I thought about it was when I was talking with
9 Pup in 2013. I hadn't thought about it after that
10 until 2015, when --

11 Q. And the conversation in 2013 is the
12 conversation that never made it into any of the FBI
13 reports?

14 A. It did. It's somewhere. It has to be,
15 because I said it.

16 Q. Okay. When you were talking with Eric
17 Duran, you thought you were talking in confidence;
18 correct?

19 A. Right.

20 Q. You didn't know you were being recorded?

21 A. No.

22 Q. And I mean, I asked you earlier today --
23 you said you didn't listen to all the recordings;
24 you got a little bored with it?

25 A. Right.

1 Q. But you know now that you were being
2 recorded?

3 A. Yes.

4 Q. Now, there came a time in 2015 when Mr.
5 Baca returned to New Mexico; correct?

6 A. Yes.

7 Q. And you didn't know it at the time, but
8 you had been strategically placed next to Eric Duran
9 and Mr. Baca at Level 6?

10 A. Yes.

11 Q. And Mr. Duran was still recording the
12 three of you?

13 A. Yeah. I didn't know at the time.

14 Q. You didn't know that at the time?

15 A. No.

16 Q. But you know it today?

17 A. Yes.

18 Q. Did you listen to those recordings?

19 A. No.

20 Q. Are you aware that there are absolutely no
21 recordings of you talking to Mr. Baca about the
22 Marcantel --

23 A. Yeah, we never -- because he was on the
24 other side of Crazo, and I was on this side of
25 Crazo, and we didn't talk on the tier, hardly.

1 Q. Didn't talk about it at all?

2 A. At all.

3 Q. And your curiosity didn't get the better
4 of you ever to talk to him about it?

5 A. By that time, I was already suspicious of
6 Eric and people around me, because of certain things
7 that the FBI had done.

8 Q. Already.

9 A. Already. So I had a suspicion because of
10 the way the letter came back to me and things like
11 that. I was already trying to be quiet as much as I
12 could at that time.

13 Q. But you were talking to Adam Vigil?

14 A. Yes, by that time, I was, because I had a
15 feeling something was going to go down.

16 MR. LOWRY: May I have a moment, Your
17 Honor?

18 THE COURT: You may.

19 MR. LOWRY: I don't have any other
20 questions, Your Honor.

21 THE COURT: Thank you, Mr. Lowry.

22 Mr. Villa.

23 MR. VILLA: Yes, Your Honor. Thank you,
24 Your Honor.

25 THE COURT: Mr. Villa.

1 CROSS-EXAMINATION

2 BY MR. VILLA:

3 Q. Good afternoon, Mr. Martinez.

4 A. Good afternoon.

5 Q. Right before you cooperated with the
6 Government in this case, what was your status in the
7 SNM?

8 A. I was a leader.

9 Q. What did they call you? They didn't call
10 you leader; right? They called you something else?

11 A. Shadow.

12 Q. No, that was your nickname. Were you a
13 shot-caller?

14 A. There was no other names. It was just --
15 to the youngsters is big homie.

16 Q. A big homie?

17 A. Yeah.

18 Q. So if you ordered somebody to do
19 something, they're supposed to do it?

20 A. Right.

21 Q. And that's, I guess, a step above being a
22 soldier?

23 A. Yes.

24 Q. Now, Mario Rodriguez -- you testified a
25 little bit about him and a conversation you had with

1 him. I don't want to get into what the conversation
2 was, but you had a conversation with Mario Rodriguez
3 after the Javier Molina hit; correct?

4 A. Yes.

5 Q. Was that in 2015?

6 A. 2014, I believe.

7 Q. 2014. Can I see Government's Exhibit -- I
8 believe it's 586, please. Government's 586. It's
9 already been admitted. That's Mario Rodriguez?

10 A. Yes.

11 Q. Also goes by Blue?

12 A. Yes.

13 Q. That's the person you were having a
14 conversation with?

15 A. Yes, in the yard.

16 Q. In the yard at PNM North?

17 A. Yes, PNM North.

18 Q. So when you're at PNM North, you guys
19 aren't actually in the same yard; you're talking
20 between cages; right?

21 A. Cages, yes.

22 Q. And at PNM North, that's where you have
23 these conditions of confinement that you were trying
24 to get away from? You're talking about it with Mr.
25 Lowry; right?

1 A. Yes.

2 Q. Can you tell the jury just briefly what
3 those conditions of confinement are like?

4 A. They had us in restriction; like we
5 couldn't have visits, phone calls. Just restricted
6 movement. We couldn't go outside with no one else
7 but ourselves. Real restrictive.

8 Q. That's what they called at least at that
9 time Level 6; right?

10 A. Well, at that time, again, the Level 6,
11 the Level 6 inmates had it better than us.

12 Q. When you say "us," you're talking about
13 the SNM, members of the SNM?

14 A. Yes, they called it the SNM pods. So they
15 had us in one pod where we could only go outside by
16 ourselves; take, I think it was, showers three times
17 a week. It was -- we were restricted.

18 Q. Let me ask you about that. You get a
19 shower three times a week?

20 A. Right.

21 Q. How often did you get to go outside for
22 this yard time?

23 A. At the very beginning, for the first 60
24 days we didn't get yard at all.

25 Q. Just stuck in the cell for 60 days?

1 A. Stuck in the cell.

2 Q. After the 60 days, then how often did you
3 get to go?

4 A. Then we started going out five days a
5 week, but it was just by ourselves.

6 Q. And when you go outside, how long did you
7 get to be outside?

8 A. For an hour.

9 Q. So one day an hour of rec?

10 A. An hour a day from Monday through Fridays.

11 Q. Five days a week. Okay. The rest of the
12 time, you're in the cell?

13 A. Yes.

14 Q. Other than your shower?

15 A. That's right.

16 Q. How big is the cell?

17 A. I don't know. It's pretty small.

18 Q. When you say "pretty small," can you give
19 the jury an idea -- I mean, you're about, what, 6
20 foot tall?

21 A. Yeah, about 5'10".

22 Q. So if you lie down on the ground, how many
23 of you can fit longways in that cell?

24 A. One and a half of me.

25 Q. Okay. So give or take, maybe it's --

1 A. About one of me this way, so --

2 Q. One of you widthwise?

3 A. Yeah.

4 Q. So it's about 6 feet tall, give or take,
5 wide, and 10 feet long?

6 A. Yes.

7 Q. And you're just in there all day long?

8 A. Yes. And the restrictions lasted for
9 about a year. And then they let us out and we
10 started going out to the yard more often with each
11 other, with other pods.

12 Q. If I understood your testimony correctly,
13 this happened to you after Javier Molina was
14 murdered; right?

15 A. That's right.

16 Q. And you weren't at Southern New Mexico
17 Correctional Facility here in Las Cruces when that
18 happened?

19 A. No.

20 Q. So it just happened to -- everybody that
21 was SNM got put in these conditions?

22 A. Right.

23 Q. And you didn't like that.

24 A. No.

25 Q. While you were in these conditions for

1 that year period, how did it affect you?

2 A. Like mentally?

3 Q. Yes.

4 A. It made me angry, anxious; didn't trust
5 the administration, things like that.

6 Q. All right. So it's this period of time
7 shortly after the Javier Molina murder in 2014 when
8 you have this conversation with Mario Rodriguez;
9 right?

10 A. Yeah. It's like later in the year. He
11 didn't arrive there right away. I think they
12 brought him later on and put him in the next pod,
13 next to me. He wasn't in our pod.

14 Q. Just happenstance, you were next to him in
15 the yard to talk --

16 A. Yeah, we'd see each other, especially in
17 the winter. Hardly anybody goes out, so when we
18 would come out together, it was because no one else
19 would go outside, so we'd be out there.

20 Q. At that point in time, what was Mario
21 Rodriguez's status in the SNM? Was he a shot-caller
22 or a big homie?

23 A. He had a lot of respect, yeah. Yes.

24 Q. Had a lot of respect?

25 A. Yes.

1 Q. Would you say he was trying to move his
2 way up the ladder in the SNM?

3 A. I think, yeah, possibly, yeah.

4 Q. So after this conversation, you and Mario
5 agreed to put a hit on Ron Sanchez?

6 A. Yes.

7 Q. And you wanted to put a hit on Daniel
8 Sanchez, but you couldn't, so you did it on Ron
9 Sanchez.

10 A. Yes.

11 Q. And Mario Rodriguez didn't have any
12 problem with that; he agreed.

13 A. Well, it was actually coming from him.

14 Q. It was his idea?

15 A. Yes.

16 Q. To put a hit on Daniel Sanchez?

17 A. Yes.

18 Q. Now, a little bit later in this case,
19 isn't it true that Mr. Rodriguez wrote you a letter?

20 A. Yes.

21 Q. And can I --

22 MR. VILLA: Your Honor, I'd like to have
23 this marked as Defendants' Exhibit next, which is
24 FQ. May I approach?

25 THE COURT: You may.

1 BY MR. VILLA:

2 Q. Mr. Martinez, I've handed you a document
3 that I've marked for identification as Defendants'
4 Exhibit FQ. Is this the letter Mr. Rodriguez wrote
5 to you?

6 A. Yes.

7 Q. Can you tell me when you received this
8 letter?

9 A. It was right after we got arrested in this
10 indictment right here.

11 Q. So you got arrested in this case?

12 A. In this case, yes.

13 Q. And Mr. Rodriguez wrote you a letter. How
14 did you receive it?

15 A. Can I reread it?

16 Q. You can read it to yourself. Don't read
17 it out loud.

18 A. Yeah.

19 Q. That's the letter?

20 A. Yeah.

21 Q. Actually, it's front and back, if you want
22 to look on the back side, and make sure that's also
23 part of the same letter.

24 A. Yeah. I remember this.

25 Q. That's the same one we're talking about?

1 A. He sent it to me when we were in Otero.

2 Q. Otero. Oh, just down the way here?

3 A. Right.

4 Q. And how did you know that it was from
5 Mr. Rodriguez?

6 A. Well, because he was my neighbor, and he
7 told me to send his line -- send my line, and he
8 sent it to me.

9 Q. Okay. So a line is like a string that you
10 send to the cell next to you?

11 A. Yeah, to fish to my neighbor. And he sent
12 me the letter.

13 Q. Let me just make sure that the jury
14 understands and that I understand. You put your
15 line, and you send it over to the cell next to you?

16 A. Yes.

17 Q. And Mario Rodriguez was next to you at
18 that time?

19 A. Right. We were in our own cells, and I
20 sent the line to his cell, and he sent me back the
21 letter on the line, pulling the string.

22 Q. You just pull it underneath your door?

23 A. Right.

24 Q. And I believe that on approximately
25 January 21, 2016, you provided that letter to the

1 FBI; correct?

2 A. Yes.

3 MR. VILLA: Your Honor, I would move to
4 admit Defendants' FQ.

5 THE COURT: Any objection, Mr. Castellano?

6 MR. CASTELLANO: No objection, Your Honor.
7 Can I just get the Bates stamp from the letter?

8 MR. VILLA: Yes, it's 31610 and 31611.

9 THE COURT: Any objection from any other
10 defendant?

11 MS. DUNCAN: No, Your Honor.

12 THE COURT: Not hearing any objection,
13 Defendants' Exhibit FQ will be admitted into
14 evidence.

15 (Defendants' Exhibit FQ admitted.)

16 MR. VILLA: May I approach, Your Honor?

17 THE COURT: You may.

18 BY MR. VILLA:

19 Q. Mr. Martinez, I'm going to put it up on
20 the Elmo. So I'm showing you, there is the exhibit
21 sticker, FQ, and the letter actually starts on the
22 back page; correct? So what I'm showing you here is
23 Bates No. -- you see the numbers I'm pointing to at
24 the bottom, 31610?

25 A. Yes.

1 Q. That's the front -- first page of the
2 letter; correct?

3 A. Yes.

4 Q. And in the first sentence Mr. Rodriguez is
5 writing you to say: "You're not going to take a
6 plea are you"; right?

7 A. Yes.

8 Q. So he's trying to ask you about taking a
9 plea in this case?

10 A. Right.

11 Q. And a little further down -- let's see
12 here, he asks here, "You're not going to dive back
13 into the Bible, are you?" Do you see that question?

14 A. Yes.

15 Q. Do you know why he asked you that?

16 A. Yeah, because I was into the Bible at one
17 time, reading.

18 Q. And in terms of, you know, the SNM, is
19 there a specific meaning into that when he's asking
20 you "You're not going to dive back into the Bible"?

21 A. Because once I -- I did that for, like,
22 nine years, and just stayed out of the politics.
23 That's what he's talking about.

24 Q. So if you're into the Bible or into
25 religion, you sort of have a pass, if you will, of

1 having to get into SNM politics?

2 A. Well, it depends on the reasoning. I
3 mean, if you're a rat, you don't get a pass. But if
4 you haven't done nothing, you're all right.

5 Q. I see. And after asking you about if
6 you're going to get into the Bible, he says,
7 "Because we're going to need you, ese. We want to
8 rebuild this fucking car and make it stronger than
9 it has ever been."

10 Did I read that right?

11 A. Yes.

12 Q. What did you understand him to mean there?

13 A. That they want it done, they want it
14 finished, they wanted to keep going the route they
15 were going.

16 Q. Which route?

17 A. To keep building on the SNM to keep
18 structuring and restructuring and so on that we'd
19 been doing for the last 20 years, yes.

20 Q. That's what you thought Mario Rodriguez
21 wanted?

22 A. Yes. Nonstop.

23 Q. All right. Let's see. I'm going to flip
24 over now to the second page. Do you see here at the
25 bottom, 31611. That's the second page; correct?

1 A. Yes.

2 Q. I'm underlining right there the way that
3 the letter is signed. Do you know what that says?

4 A. Yeah, "Amor."

5 Q. What does that mean?

6 A. Respect. It's -- amongst carnals -- it
7 means love in Spanish, but we use it in terms of
8 recognizing one another.

9 Q. I see. Let me direct your attention to
10 this line here. It says, "I've never see it running
11 right, homie, and in order to see it, I'm willing to
12 put my pride aside" --

13 I messed this up here. Let me try it
14 again. "I'm willing to put my pride aside and
15 follow orders from someone who is for bringing us
16 together. I just want to see that my life and work
17 is worth something bigger than me." Do you see that
18 there?

19 A. Yes.

20 Q. What did you understand him to be talking
21 about?

22 A. He was a soldier, and he was willing to do
23 whatever to make -- you know, to make everything
24 right.

25 Q. And this part here, "I've never see it

1 running right, homie"?

2 A. Well, he was a youngster when he got in,
3 and you know, the SNM wasn't perfect or one big old
4 mafia, but it was a killing machine and he knew that
5 that's what he got into. So it might have not been
6 running the way he wanted it, the way all of us
7 thought, but we were all together when it counted.

8 Q. So it's fair to say you understood this
9 letter to mean, "Don't take a plea; let's keep this
10 thing going; let's fix it; let's make it better"?

11 A. Yes.

12 Q. And that's what Mario Rodriguez was
13 telling you he wanted to do at that time?

14 A. Yes.

15 MR. VILLA: May I have just a moment, Your
16 Honor?

17 THE COURT: You may.

18 BY MR. VILLA:

19 Q. Mr. Martinez, before you testified in
20 court and during lunch, you're housed downstairs,
21 aren't you?

22 A. Yes.

23 Q. And who have you been housed with
24 downstairs today?

25 A. By myself.

1 Q. Are there other cooperating witnesses down
2 there that you've seen?

3 A. Yeah, they're in the other cells, where I
4 can't talk to them.

5 Q. Who have you seen? Have you seen Eric
6 Duran?

7 A. Yeah, he's down there somewhere.

8 Q. Anybody else?

9 A. Mario, I think, is down there.

10 Q. But it's your testimony you can't talk to
11 them?

12 A. I can't talk to them.

13 Q. And when I say "can't," meaning you're not
14 allowed to or you're physically unable?

15 A. Both.

16 Q. Both?

17 A. Both. I'm not allowed to, and I'm
18 physically unable to talk to them.

19 Q. But there have been times in this case
20 when you were allowed to talk to the other witnesses
21 that were working with the Government; true?

22 A. True.

23 Q. You all were housed together; right?

24 A. Yes.

25 Q. And I think you testified a little bit

1 about some of this. You said you were incarcerated
2 in the Sandoval County Detention Center?

3 A. Yes.

4 Q. And at that time you were with some of the
5 other cooperating witnesses?

6 A. That's correct.

7 Q. Was that the time when you reset your
8 tablet?

9 A. I did it before that.

10 Q. When you were at Sandoval County or
11 somewhere else?

12 A. I was at PNM North when I reset it.

13 Q. All right. And there was a point in time
14 when you were with Jerry Armenta. I think you
15 testified he showed you how to use a tablet, or you
16 let him use your tablet?

17 A. Yes, both.

18 Q. Both things. Where was that?

19 A. In Sandoval.

20 Q. In Sandoval County Detention Center. And
21 you know Jerry Armenta is working with the
22 Government; right?

23 A. Right.

24 Q. Did Jerry Armenta ever use your tablet to
25 look for pornography for himself?

1 A. I mean, I let him do it to get mine. I
2 don't know what he looked at on himself, because he
3 had it overnight until the next morning.

4 Q. All right.

5 A. At the very beginning, because he was --
6 his cell was the only cell that got Wi-Fi at the
7 time.

8 Q. Do you know if, during that overnight
9 period, he used your tablet to look at child
10 pornography?

11 A. Not that I know of. There is none on my
12 tablet.

13 Q. Did he ever let you use his tablet?

14 A. No.

15 Q. While you were at Sandoval County
16 Detention Center, I think you testified to this jury
17 that you got Suboxone; right?

18 A. Yes.

19 Q. And as a matter of fact, you bought
20 Suboxone from Timothy Martinez, didn't you?

21 A. Yes.

22 Q. Timothy Martinez, who is also working with
23 the Government?

24 A. That's correct.

25 Q. And this is a time when you are both in

1 Sandoval County, you guys have already made the
2 decision to go work for the Government; correct?

3 A. That's right.

4 Q. And so after that, you're together in
5 Sandoval County, and Timothy Martinez is still
6 selling Suboxone?

7 A. Yes.

8 Q. At least he sold it to you; right?

9 A. Yes.

10 Q. Now, he's testified to this jury that one
11 of the reasons he wanted to --

12 MR. CASTELLANO: Objection, Your Honor.
13 Referencing other witness' testimony violates the
14 rule against exclusion of witnesses.

15 THE COURT: Well, let's not do that.

16 MR. VILLA: That's fine, Your Honor.

17 BY MR. VILLA:

18 Q. Let me ask you this: When he sold you the
19 Suboxone, Mr. Martinez, did he tell you that he was
20 walking with the Lord?

21 MR. CASTELLANO: Objection, calls for
22 hearsay.

23 MR. VILLA: Well, I think it would go
24 towards impeaching Mr. Martinez' direct testimony to
25 the jury.

1 THE COURT: Sustained.

2 BY MR. VILLA:

3 Q. How many times did Mr. Martinez sell you
4 Suboxone?

5 A. I couldn't count. I wouldn't know.

6 Q. A lot of times, then?

7 A. A few times, yeah.

8 Q. I mean, it would be more than a few, if
9 you're not able to count; wouldn't you agree?

10 A. Right.

11 Q. How did you purchase the Suboxone?

12 A. Either money that I had on my books or
13 with art. I draw art. I did a lot of art.

14 Q. So you draw art and use that as currency?

15 A. Yes.

16 Q. Or money that you had on your books?

17 A. Right.

18 Q. And you were given money by the FBI for
19 your cooperation in this case, weren't you?

20 A. Yes.

21 Q. And that money was put on your books?

22 A. Yes.

23 Q. You also bought Suboxone from Jerry
24 Montoya, didn't you?

25 A. Yes.

1 Q. And Jerry Montoya is working with the
2 Government. You know that?

3 A. Yes.

4 Q. You were housed with him at the Lea County
5 Detention Facility?

6 A. Yes.

7 Q. After you guys had both decided to
8 cooperate with the Government; right?

9 A. Right.

10 Q. And Mr. Montoya sold you some Suboxone.
11 How did you pay for that?

12 A. Same way -- well, actually, with him, it
13 was a little bit different. I didn't really buy
14 from him too much. He would just give it to me.

15 Q. So it's your testimony that you never
16 bought Suboxone from Mr. Montoya?

17 A. No, I bought some, but not often. Like,
18 just maybe \$20 here, \$20 there, I'd pitch in. And
19 we, you know, get a good little issue, and then that
20 would be it.

21 Q. I understand. So with Mr. Martinez, you
22 were always purchasing it?

23 A. Right.

24 Q. With Mr. Montoya, sometimes you purchased
25 it and sometimes he just gave it to you?

1 A. Right.

2 Q. And when you purchased it from Mr.
3 Montoya, you also used money that was on your books?

4 A. Yes.

5 MR. VILLA: That's all I have.

6 THE COURT: Thank you, Mr. Villa.

7 Ms. Jacks, do you have cross-examination?

8 MS. JACKS: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. JACKS:

11 Q. I just have a few questions, Mr. Martinez.
12 I want to talk to you about this paperwork on Javier
13 Molina that you've told us today that you say you
14 got. And you're claiming this was mailed in to you
15 while you were housed at PNM North?

16 A. Yes.

17 Q. And I think you described the paperwork as
18 about two or three pages?

19 A. That's correct.

20 Q. Containing a little of this and that and
21 things you can't remember?

22 A. Yes, it was a bench warrant, is what I
23 remember.

24 Q. You think it was a bench warrant or it
25 was --

1 A. I know it was a warrant.

2 Q. So it was some sort of legal document?

3 A. Yes.

4 Q. Who do you claim mailed this in to you?

5 A. I don't.

6 Q. So it comes from a mystery person?

7 A. Yes.

8 Q. And in fact, today is the first time in
9 the entire investigation of this case that you've
10 claimed that you saw some sort of paperwork on
11 Mr. Molina, isn't it?

12 A. No, I've already told the Government this.

13 Q. You didn't -- well, you didn't tell the
14 Government that on December 3rd of 2015, did you?

15 A. Yes, I did.

16 Q. You didn't tell the Government that on
17 December 17th of 2015, did you?

18 A. Yes, I did.

19 Q. You didn't tell that to the Government on
20 January 21st of 2016, did you?

21 A. Yes.

22 Q. You told them?

23 A. Yes.

24 Q. You didn't tell the Government on
25 September 15th of 2016, did you?

1 A. Yes, I did.

2 Q. You didn't tell them on December 2nd of
3 2016, did you?

4 A. Yes.

5 Q. And you didn't tell them on January 22nd
6 of 2018, did you?

7 A. Yes.

8 Q. So it's your testimony you were
9 interviewed by the Government on at least six
10 separate occasions in preparation for this trial?

11 A. Yes.

12 Q. Is that right?

13 A. Yes.

14 Q. And it's your testimony here at this trial
15 that on every one of those six occasions, you told
16 them that some mystery person mailed in some
17 paperwork on Javier Molina while you were housed at
18 PNM North?

19 A. Yes, I told them that, ma'am.

20 Q. And specifically on December 12th of 2016,
21 you were asked about the Molina homicide and
22 paperwork on Mr. Molina, weren't you?

23 A. Yes.

24 Q. And you were asked and interviewed in the
25 presence of three other Government witnesses,

1 weren't you?

2 A. Three other --

3 Q. -- government witnesses. Back on December
4 2nd of 2016, didn't Bryan Acee --

5 A. Yes.

6 Q. -- interview you in the presence of three
7 other Government witnesses?

8 A. Yes.

9 Q. And that would be Benjamin Clark?

10 A. Yes.

11 Q. Jerry Armenta?

12 A. Yes.

13 Q. Robert Martinez; right?

14 A. Yes.

15 Q. And you?

16 A. Yes.

17 Q. And the FBI agent sat you all down and
18 talked to you all together about Molina; right?

19 A. Right.

20 Q. And during that interview, you didn't say
21 one thing about ever seeing any paperwork on
22 Mr. Molina?

23 A. At that time, no.

24 MS. JACKS: I have nothing further.

25 THE COURT: Thank you, Ms. Jacks.

1 Mr. Castellano, do you have redirect of
2 Mr. Martinez?

3 MR. CASTELLANO: Yes, Your Honor.

4 THE COURT: Mr. Castellano.

5 REDIRECT EXAMINATION

6 BY MR. CASTELLANO:

7 Q. Mr. Martinez, do you remember meeting with
8 me before trial?

9 A. Yes.

10 Q. And do you remember making a statement
11 about having received the paperwork through legal
12 mail?

13 A. Yes.

14 Q. And so when Mr. Lowry said that he was
15 surprised, it was the first time that he'd heard
16 that, you said you were surprised that this is the
17 first time he heard that.

18 A. Yes.

19 Q. So were you aware that your statement was
20 disclosed to the defense on January 28th of this
21 year?

22 A. Yes.

23 Q. And just to make sure --

24 MR. CASTELLANO: May I approach the
25 witness, Your Honor?

1 THE COURT: You may.

2 BY MR. CASTELLANO:

3 Q. I'm showing you a letter dated January 28,
4 2018. I'll have you review that to yourself.

5 A. Yeah, that's --

6 Q. So do you remember disclosing that before
7 this trial even began, Mr. Martinez?

8 A. Yes.

9 Q. Now, also going back to December 2nd of
10 2016, do you remember what your response was to the
11 question: "Who called the green light on Javier
12 Molina and when was it called?"

13 A. Yes.

14 Q. And what was your response, as best as you
15 remember?

16 MR. LOWRY: Objection, Your Honor. That's
17 hearsay.

18 THE COURT: What are you trying to prove
19 with --

20 MR. CASTELLANO: Only that the statement
21 was made, Your Honor. The defense has alleged that
22 he made no statement. And this is only to clarify
23 that the statement was actually made. It's not for
24 the truth.

25 MR. LOWRY: Your Honor, may we approach?

1 THE COURT: Well, you can approach.

2 (The following proceedings were held at
3 the bench.)

4 THE COURT: Aren't you trying to establish
5 the truthfulness of this statement? You're trying
6 to get it for the truth. You're not trying to
7 impeach him.

8 MR. CASTELLANO: He's testified to this
9 statement, so it's come in for the truth. The
10 defense has alleged he never made the statement to
11 the FBI. He actually made it in December of 2016.

12 MR. LOWRY: No.

13 MR. CASTELLANO: The allegation was,
14 you've never told the FBI this; isn't it true? So
15 the question is for the purpose that he had, in
16 fact, given that information to the FBI over a year
17 ago.

18 MR. LOWRY: Your Honor --

19 THE COURT: Are you trying to fit it in a
20 prior consistent statement to avoid the hearsay?

21 MR. CASTELLANO: No, it wouldn't count as
22 a prior consistent statement, because he was already
23 cooperating. But it does rebut the claim that he
24 never made the statement when it was documented in
25 an FBI 302. He's already testified to -- the

1 testimony has already come in.

2 MR. LOWRY: Your Honor, may I be heard on
3 that real quick?

4 THE COURT: You may.

5 MR. LOWRY: Your Honor, my question very
6 carefully presented to him whether he told the FBI
7 that he had met with Eric Duran and Anthony Ray Baca
8 when the statement was made that -- Mr. Castellano
9 is referring to the statement that he told the FBI.

10 THE COURT: Well, I think the best way to
11 deal with this is let him do his thing, and let you
12 come back and make your point.

13 MR. LOWRY: But this is coming in for the
14 truth and it misses the point. And I think it's
15 confusing, because the point is, was a third party
16 present. All he is trying to do is rehabilitate him
17 to rehabilitate this report.

18 MR. CASTELLANO: The confusion came from
19 the allegation that he never made the statement, or
20 it was never documented in the FBI report. And this
21 is going to prove that it was made and documented.

22 MR. LOWRY: That he made the statement
23 with Duran.

24 THE COURT: What you're arguing about now
25 is just whether the statement was made, not whether

1 it's true or not. And so I think whether the
2 statement is made or not, if you want a limiting
3 instruction on it -- because the Government doesn't
4 care whether it's coming in for the truth. I can
5 give it, and then you can come back and make your
6 point. But it's whether it was ever made or not.
7 So I think I'm going to allow the Government to do
8 their thing and give a limiting instruction, since
9 they don't want this in for the truth, and you can
10 do whatever you want to do on recross.

11 MR. LOWRY: Here's the point: I don't
12 disagree with Mr. Castellano that he elicited that
13 on direct, so I don't dispute that he made that
14 statement. I just dispute that he made it in the
15 company of Eric Duran.

16 THE COURT: Okay. You can recross him on
17 that.

18 MS. DUNCAN: Can I confer with Mr. Lowry
19 for one moment?

20 THE COURT: What's the date of this
21 statement?

22 MR. CASTELLANO: December 2, 2016.

23 MR. LOWRY: Can we talk about the
24 paperwork?

25 MR. CASTELLANO: Actually, the hit was

1 called --

2 MR. LOWRY: I don't dispute that.

3 MR. CASTELLANO: But he did dispute it in
4 his cross-examination of the witness.

5 MR. LOWRY: I disputed it, that he --

6 THE COURT: I'll give you a chance to
7 recross, if you want to go back into this ground.
8 But I'm going to instruct the jury to the extent
9 that these statements are being offered only to
10 establish whether he made the prior inconsistent
11 statements or consistent statements, and it's not
12 for the truth of the matter.

13 MR. LOWRY: Perfect.

14 (The following proceedings were held in
15 open court.)

16 THE COURT: All right. Ladies and
17 gentlemen, you're going to hear a statement, and the
18 only purpose of this is to let you decide whether
19 Mr. Martinez has made inconsistent statements. The
20 statement itself is not being offered for the truth
21 of the matter, and you shouldn't consider it for the
22 truth of the matter. You should only use it for
23 determining whether Mr. Martinez made consistent
24 statements.

25 Mr. Castellano.

1 BY MR. CASTELLANO:

2 Q. Okay, Mr. Martinez, do you recall making a
3 statement to the FBI on December 2, 2016, in
4 response to the question: "Who called the green
5 light on Javier Molina and when was it called?"

6 A. Yes.

7 Q. And do you know whether that's documented
8 in an FBI report?

9 A. Yes.

10 Q. So tell us what it is that you reported to
11 the FBI on December 2, 2016.

12 A. I told them that me and Pup had a meeting
13 in 2013. We talked about paperwork on Javier
14 Molina, and that BB had it, and to get it out of BB
15 and get that taken care of as fast as possible.

16 Q. I just want to make sure you have this
17 right. Are you sure that's what was documented in
18 the 302? I can refresh your recollection.

19 A. You're going to have to refresh me what's
20 documented. I know what was said.

21 MR. CASTELLANO: May I approach the
22 witness, Your Honor?

23 THE COURT: You may.

24 BY MR. CASTELLANO:

25 Q. I'm handing you a Bates stamp 20163.

1 First of all, is that an FBI report?

2 A. Yes.

3 Q. Is your statement documented in that
4 report?

5 A. Yes.

6 Q. After reviewing that document, does it
7 refresh your memory about what was documented?

8 A. Yes.

9 Q. What was that?

10 A. It was that it was called a hit one year
11 before, at least one year before the actual hit
12 happened.

13 Q. And that was a discussion with who?

14 A. With Pup, and that's exactly what I said
15 earlier in 2013, when we were in the yard.

16 Q. Do you recall making a statement on
17 December 17th of 2015 to the FBI about a discussion
18 you had with Mr. Baca regarding Dwayne Santistevan?

19 A. Yes.

20 Q. What do you recall about making that
21 statement?

22 A. That he was frustrated with the
23 administration, and that he wanted them to pay, and
24 Santistevan's son would have been an easy target
25 because he was an LT at the Central Correctional

1 Facility, and -- but either one, either him or his
2 dad was a target at that time.

3 Q. And are you aware of whether this
4 statement is documented in an FBI report?

5 A. Yeah, it should be.

6 Q. If you're not sure, I can refresh your
7 recollection.

8 A. Yeah, I'm pretty sure it is.

9 Q. Now, you mentioned earlier a discussion
10 about the need for a tabla because people needed to
11 stop killing each other and spreading rumors. Do
12 you remember that?

13 A. Yes.

14 Q. Was that killing each other within the
15 gang?

16 A. Yes.

17 Q. So were the politics of the gang causing
18 problems internally?

19 A. Yes.

20 Q. And then who was on that tabla that you
21 mentioned?

22 A. What's that?

23 Q. Who was on that tabla that you mentioned
24 that was designed for the purpose of reducing this
25 kind of friction?

1 A. At that time when -- you're talking about
2 right now?

3 Q. Yes.

4 A. Me, Pup, BB, and Carlos Herrera, and
5 Dan Dan at the time.

6 Q. There is a question about you wanting to
7 get moved next to Carlos Herrera because he didn't
8 plot to kill people. Do you remember that?

9 A. Yeah. That was after -- after everything
10 had went down.

11 Q. Now, the fact that he was on the tabla
12 with you -- did that resolve him of responsibility
13 for taking care of snitches?

14 A. Yes.

15 Q. Let me ask, do you know what it means to
16 resolve the problem?

17 A. No.

18 Q. If he was on the tabla, did that mean he
19 could overlook the fact that someone was a snitch?

20 A. Oh, no, no. No one can.

21 Q. You were asked about a recording between
22 yourself and Eric Duran. Do you remember that?

23 A. Yes.

24 Q. At that time, did Eric Duran capture you
25 agreeing to kill Mr. Marcantel or Mr. Santistevan?

1 A. Yes.

2 Q. And did you plead guilty to that?

3 A. Yes.

4 Q. And is that what you've told the jury
5 today?

6 A. Yes.

7 Q. Now, regarding Cheryl Tiller, the police
8 officer that you shot, you indicated that you
9 initially heard that she killed her ex-boyfriend but
10 you didn't believe it?

11 A. Right.

12 Q. And then you said something how later on
13 you did believe it?

14 A. Yes. After the investigation and
15 everything of all the paperwork came out, yes, then
16 I found out it was true.

17 Q. And so at that point in her life, was she
18 also in a lot of trouble?

19 A. Excuse me?

20 Q. At that point in her life, was she also in
21 a lot of trouble?

22 A. I don't know -- legally, you're talking
23 about? No, she wasn't in trouble. She could have
24 got in serious trouble, yeah.

25 Q. Right. So at the point that you were

1 hanging out with her, had she been caught for any
2 illegal activity?

3 A. Yeah, she would have been in serious
4 trouble.

5 Q. Now, you were asked about Styx
6 dry-snitching on you. Do you remember that?

7 A. Yes.

8 Q. And there is an indication that you had
9 not killed him, and you said you hadn't had a chance
10 to kill him. Do you remember that?

11 A. Yes.

12 Q. And if you had been in the same facility,
13 would you have attempted to kill him for snitching
14 on you?

15 A. Probably.

16 Q. How did Eric Duran or Crazo and Mr. Baca
17 get along?

18 A. Real good.

19 Q. Why do you say that?

20 A. That was his buddy. When we were in Level
21 4 together, Pup made it clear that he was one of the
22 ones he trusted, and Crazo lived in my pod with me.

23 Q. So did you have any reason to doubt Eric
24 Duran when he told you that Pup was part of this hit
25 on --

1 MR. LOWRY: Objection, Your Honor, calls
2 for speculation.

3 THE COURT: No, I don't think so.
4 Overruled.

5 BY MR. CASTELLANO:

6 Q. Did you believe Eric Duran?

7 A. Yes.

8 Q. And that's when he was telling you about
9 things that Pup had told him; is that correct?

10 A. Yes.

11 Q. You were asked about whether or not Mr.
12 Baca knew that Mr. Marcantel had called him a
13 crybaby. Do you remember that part?

14 A. Yeah.

15 Q. Did you actually know whether or not word
16 got back to Mr. Baca about being called a crybaby?

17 A. Not for sure. I was just listening to
18 Crazo again.

19 Q. Now, you were shown the letters that you
20 wrote to other SNM members regarding the
21 conspiracies to murder Mr. Marcantel and
22 Mr. Santistevan. Do you remember those?

23 A. Yes.

24 Q. Now, did Eric Duran trick you into this
25 conspiracy to murder these two men?

1 A. No.

2 Q. Had you already agreed that they should be
3 murdered?

4 A. I already agreed.

5 Q. And in response, is it Mr. Duran who then
6 convinced you to actually put those ideas into
7 writing?

8 A. Yes.

9 Q. You indicated that about that time Arthur
10 Chavez had written you a letter?

11 A. Yes.

12 Q. What do you remember about that letter?

13 A. He -- the first letter he said that he had
14 been in contact with Pup, and he was -- that he knew
15 who Pup was, I think, I believe, if I'm not
16 mistaken, and he's ready and down for whatever. I
17 really didn't know the guy. I just knew that he
18 was -- that he knew Pup from somewhere along the
19 line or something. I didn't know him personally.

20 Q. And when he was ready and down for
21 whatever, was that in response to either Mr.
22 Marcantel or Santistevan?

23 A. Yeah. I don't think he worded it exactly
24 like that, but I know he's -- I'm just summing it
25 up, his letters, that he was ready for me to give

1 him orders or tell him whatever needs to be done.
2 And yes, it was in reference to what we were talking
3 about Marcantel, the administration getting hit and
4 the -- mainly Marcantel.

5 Q. Now, Defendants' Exhibit FQ, which is the
6 letter from Blue?

7 A. Yes.

8 Q. Did you say that you gave that to the FBI?

9 A. Yes.

10 Q. So as part of your cooperation, then, did
11 you actually turn this over to the Government?

12 A. Right. I was already cooperating at the
13 time.

14 Q. And so in other words, we know about this
15 because of you?

16 A. Yes.

17 Q. And at the time you received this letter,
18 were the federal charges pending?

19 A. Yes.

20 Q. And so even despite the SNM being charged
21 federally, I think you said earlier that the SNM was
22 still willing to keep building?

23 A. Yes.

24 Q. And you also told defense counsel the SNM
25 was a killing machine?

1 A. Yes.

2 Q. Is that true?

3 A. Yes.

4 MR. CASTELLANO: I pass the witness, Your
5 Honor.

6 THE COURT: Thank you, Mr. Castellano.
7 Mr. Lowry? Ms. Bhalla?

8 MS. BHALLA: Thank you, Your Honor.

9 RECROSS-EXAMINATION

10 BY MS. BHALLA:

11 Q. Good afternoon, Mr. Martinez.

12 A. Good afternoon.

13 Q. Would a leader be in danger for not acting
14 on orders to hit somebody if there was paperwork?

15 A. Yes.

16 Q. And that leader would then also be subject
17 to a hit?

18 A. Yes.

19 Q. And that's why there was hit on Carlos
20 Herrera?

21 A. Yes.

22 MS. BHALLA: Thank you.

23 THE COURT: Thank you, Ms. Bhalla.

24 Mr. Lowry.

25

1 prison mail.

2 Q. Right. Now, we talked throughout your
3 examination about how skilled you are at
4 manipulation; right?

5 A. I don't know.

6 Q. Well, with Matthew Cavalier you guys made
7 him think that he was your buddy; right?

8 A. Right.

9 Q. And that's how you got into his cell;
10 right?

11 A. Yes.

12 Q. And when you assaulted -- was it Mike
13 Dallas?

14 A. Brett Watson.

15 Q. Brett Watson. Thank you -- you made him
16 think he was your buddy?

17 A. Yes.

18 Q. And you put a lot of time and energy to do
19 that; right?

20 A. That's what I was taught.

21 Q. And that's what you did?

22 A. Yes.

23 Q. And you did that even with Cheryl Tiller;
24 right? You went to give her a hug, but you didn't
25 want to hug her; you wanted to get her pistol.

1 A. Yes.

2 Q. And every time you did that, you did that
3 to benefit yourself at the expense of someone else;
4 right?

5 A. Did it to benefit the SNM.

6 Q. Well, you testified that you killed Cheryl
7 Tiller on your own?

8 A. I wasn't planning that one. I didn't plan
9 that murder.

10 Q. But you murdered her?

11 A. Right.

12 Q. And when you hugged her, you had no
13 intention to give her love and affection; you had
14 every intention to get her gun; right?

15 A. To save my life.

16 Q. You didn't have to kill her to save your
17 life. You could have driven away.

18 A. That's what it appeared at that time.

19 Q. But nobody came to attack you after you
20 shot her?

21 A. No, I left.

22 Q. Well, yeah, you thought people, the
23 Mexican Mafia or something, was going to close in on
24 you?

25 A. That's what I thought.

1 Q. And that didn't happen, did it?

2 A. No, because I was arrested by the next
3 day.

4 Q. Arrested by the next day?

5 A. Yes.

6 Q. I thought you said it took three years to
7 figure it out.

8 A. No, I got arrested right away.

9 Q. But you know how to manipulate the
10 situation to get what you want, don't you?

11 A. I know how to do what I'm told to do and
12 what I need to do, yes.

13 Q. Did somebody tell you to give Cheryl
14 Tiller a hug?

15 A. No.

16 MR. LOWRY: No further questions.

17 THE COURT: Thank you, Mr. Lowry. Anyone
18 else?

19 Mr. Castellano, do you have redirect?

20 REDIRECT EXAMINATION

21 BY MR. CASTELLANO:

22 Q. On the Cheryl Tiller killing, you said you
23 got arrested the next day?

24 A. Yeah, around -- well, maybe within 48
25 hours. I don't know. I know it was real soon.

1 Q. Was it for that crime, or was it for your
2 parole violation?

3 A. It was a parole violation. And by the
4 nighttime, I was charged with murder.

5 Q. And then regarding the hit on Carlos
6 Herrera, it's already been your testimony that the
7 hit was outstanding for more than a year; is that
8 correct?

9 A. Yes.

10 Q. And in that year, had Carlos Herrera
11 killed -- or been involved with the murder on Javier
12 Molina, as far as you know?

13 A. As far as I know -- what do you mean?

14 Q. In other words, the hit was out --

15 MS. BHALLA: Objection, Your Honor,
16 speculation. The witness wasn't there.

17 A. Yeah.

18 THE COURT: Well, lay some foundation.

19 BY MR. CASTELLANO:

20 Q. So you knew the hit was outstanding for
21 more than a year?

22 A. Right.

23 Q. And in that year, was Mr. Molina killed?

24 A. Yes.

25 Q. The year leading up to the murder?

1 A. Yes.

2 Q. Okay. You know the order first went
3 out --

4 A. Right.

5 Q. -- that I told you about?

6 A. Yes.

7 Q. How long did it take for Mr. Molina to get
8 killed?

9 A. Yeah, about a year.

10 Q. And during that year time, was Mr. Herrera
11 a llavero or a key-holder?

12 A. Yes.

13 Q. So is it safe to say in the time that he
14 was a llavero, that first year, that Javier Molina
15 was not killed?

16 A. Right.

17 MR. CASTELLANO: Pass the witness, Your
18 Honor.

19 MS. BHALLA: Your Honor, may I ask a few
20 very briefly, Your Honor?

21 THE COURT: Yes. Let's do it after the
22 break, though.

23 All right. We'll be in recess for 15
24 minutes.

25 (The jury left the courtroom.)

1 THE COURT: All right. We'll be in recess
2 for about 15 minutes.

3 (The Court stood in recess.)

4 THE COURT: Let's go on the record.
5 Anything we need to discuss before we bring the jury
6 in?

7 I am going to be able to supply you with a
8 copy of the color picture. So Deputy Mickendrow has
9 let me look at it, and said I can make copies of it.
10 So we'll get one and we'll mark it as Exhibit N, as
11 in Nancy, to the Clerk's minutes. So it will be
12 marked there, as well.

13 Anything else we need to discuss?

14 MS. DUNCAN: Your Honor, I'm not sure if
15 we're going to get to him today, but I know the
16 Government has witness Mario Montoya on the witness
17 list for today. We had submitted some redactions to
18 the Court for transcripts involving Mr. Montoya.
19 And there is at least one transcript that we missed;
20 we missed some redactions that we wanted to suggest
21 to the Court. So I'm hoping we can address that
22 before that particular recording is played.

23 THE COURT: All right. Do you have those
24 here?

25 MS. DUNCAN: I do. It's Government's

1 Exhibit 395. And --

2 THE COURT: Is Mario going to be next?

3 No?

4 MS. ARMIJO: No, Your Honor. We have
5 three other witnesses before him.

6 THE COURT: Okay.

7 MS. DUNCAN: It may not even happen.

8 MS. ARMIJO: So it depends on how
9 productive we are this afternoon.

10 THE COURT: All right. So give me what
11 the redactions are.

12 MS. DUNCAN: So on page number 17 -- so I
13 think it starts on page 17306, and Mr. Montoya says,
14 "And what about Dan Dan and them, and where are they
15 at?"

16 And so we would ask the Court to redact
17 everything below that. And it continues onto the
18 next page, 17307, which is redactions that we
19 actually proposed to the Court when we filed our
20 objections.

21 THE COURT: Okay.

22 MS. DUNCAN: Then on page 17 -- I can give
23 this to you to look at later.

24 (A discussion was held off the record.)

25 MR. CASTELLANO: Your Honor, I think with

1 this recording, I was only going to play off of
2 pages 22, 23, and the top of 24. We can still
3 discuss redactions in case the whole thing is moved
4 in, and we only play a portion.

5 (A discussion was held off the record.)

6 MS. DUNCAN: It sounds like Mr. Castellano
7 is going to play a portion of the transcript that
8 we're not going to object to. So we may be able to
9 figure this out.

10 THE COURT: Okay.

11 MR. CASTELLANO: So the only question is
12 if we introduce it in its entirety; if we do that,
13 we'll still need to make redactions before it goes
14 to the jury.

15 THE COURT: Okay. Well, if you're not
16 going to play it to the jury, you may not care.

17 MR. CASTELLANO: That's correct. So what
18 happens is, if we move the entire recording, and
19 only play a portion, the entire recording would
20 still go to the jury. So there may still be the
21 need for redactions, is what I'm saying.

22 MS. DUNCAN: Could you just move into
23 evidence the part of the recording you're planning
24 to play for them and then just exclude the rest of
25 it?

1 MR. CASTELLANO: Possibly. I need to see
2 what else is in there.

3 MS. DUNCAN: Okay.

4 THE COURT: All right. Well, get those to
5 me sooner rather than later, whatever the dispute
6 is. Because if this is going to come up on Monday,
7 or even later today, I'm going to need a little bit
8 of time to look at them.

9 MS. DUNCAN: Okay.

10 MR. CASTELLANO: It will come up soon.
11 Thank you, Your Honor.

12 THE COURT: All right. All rise.

13 (The jury entered the courtroom.)

14 THE COURT: All right. Mr. Martinez, I'll
15 remind you that you're still under oath.

16 And Ms. Bhalla, you wanted to do some
17 recross?

18 MS. BHALLA: No, Your Honor. Thank you.
19 I appreciate it. I'm okay.

20 THE COURT: You're okay?

21 MS. BHALLA: Yes, Your Honor. Thank you.

22 THE COURT: Mr. Lowry.

23 RECROSS-EXAMINATION

24 BY MR. LOWRY:

25 Q. Mr. Martinez, you testified on redirect

1 that you'd pleaded guilty to this charge; correct?

2 A. Yes.

3 Q. I just want to make sure everybody is
4 clear. You never agreed with Mr. Baca to do
5 anything, did you?

6 A. I did agree with him.

7 Q. You didn't agree with him to kill Mr.
8 Marcantel?

9 A. Well, I agreed -- well, I couldn't do the
10 hit without Pup; that's for sure.

11 Q. Did you ever talk to Mr. Baca about the
12 Marcantel --

13 A. Physically, no.

14 Q. Were you ever near Mr. Baca talking about
15 killing Mr. Marcantel?

16 A. No.

17 MR. LOWRY: No further questions, Your
18 Honor.

19 THE COURT: Thank you, Mr. Lowry.

20 Mr. Castellano, do you have any further
21 questions of Mr. Martinez?

22 MR. CASTELLANO: No, Your Honor.

23 THE COURT: All right. Mr. Martinez, you
24 may step down.

25 Is there any reason that Mr. Martinez

1 cannot be excused from the proceedings, Mr.
2 Castellano?

3 MR. CASTELLANO: No, sir.

4 THE COURT: How about the defendants? Can
5 he be excused?

6 MS. BHALLA: Yes, Your Honor.

7 MR. VILLA: Yes, Your Honor.

8 THE COURT: Not hearing any objection,
9 you're excused from the proceedings. Thank you for
10 your testimony.

11 All right. Mr. Beck, does the Government
12 have its next witness or evidence?

13 MR. BECK: Yes, Your Honor. The United
14 States calls Joey Aranda.

15 THE COURT: Mr. Aranda, if you'll stand
16 next to the witness box on my right, your left, my
17 courtroom deputy, Ms. Standridge, will swear you in.

18 JOEY ARANDA,
19 after having been first duly sworn under oath,
20 was questioned, and testified as follows:

21 THE CLERK: Please be seated and state and
22 spell your name for the record.

23 THE WITNESS: Joey Aranda.

24 THE CLERK: How do you spell it?

25 THE WITNESS: J-O-E-Y, A-R-A-N-D-A.

1 THE COURT: All right. Mr. Aranda.

2 Mr. Beck?

3 DIRECT EXAMINATION

4 BY MR. BECK:

5 Q. Good afternoon, Mr. Aranda.

6 A. Good afternoon.

7 Q. How are you employed?

8 A. I work at the state prison in Santa Fe.

9 Q. And what's your job at the state prison in
10 Santa Fe?

11 A. Correctional officer.

12 Q. How long have you been a correctional
13 officer?

14 A. 15 years.

15 Q. And in those 15 years, have you been only
16 at the Penitentiary of New Mexico in Santa Fe?

17 A. Yes.

18 Q. And is there -- I don't know that the jury
19 knows how it works. As a corrections officer, are
20 there different levels, or do you just -- are you in
21 one specific place? What are your duties as
22 corrections officer?

23 A. There are different levels, but I work
24 with Level 4 inmates.

25 Q. And where is that at the Penitentiary of

1 New Mexico?

2 A. At the Level 5 -- or I think it's back at
3 the South facility again.

4 MR. BECK: Your Honor, at this time the
5 United States moves into evidence, without
6 objection, Defendants' Trial Exhibits M and N.

7 THE COURT: All right. Any objection from
8 the defendants?

9 MS. FOX-YOUNG: No objection.

10 THE COURT: Is that two exhibits or one?

11 MR. BECK: Two, M and N.

12 THE COURT: Defendants' Exhibits M and N
13 will be admitted into evidence.

14 (Defendants' Exhibits M and N admitted.)

15 BY MR. BECK:

16 Q. And I'm going to show you what's now been
17 admitted as Defendants' Trial Exhibit M. And if you
18 know, what are we looking at in this overhead
19 photograph?

20 A. That's a map of the prison in Santa Fe.

21 Q. Is that the Penitentiary of New Mexico or
22 PNM, as we've heard it referred to?

23 A. Yes.

24 Q. Now, I think the jury has heard that there
25 are a few facilities here. Will you circle for the

1 jury what is PNM North facility? You can do that on
2 your screen there, if you want to just circle it.

3 A. Just touch it?

4 Q. Sure. There you go.

5 A. (Witness complies.) That's the North.

6 Q. All right. And that's the one -- the
7 circular one just on the top of that screen for the
8 North.

9 Will you circle what the jury has heard
10 referred to as PNM South?

11 A. (Witness complies.) There is the South.

12 Q. And where do you -- what facility do you
13 mainly work in?

14 A. The South.

15 Q. And the jury has also heard about what's
16 called the Main. Is the Main Penitentiary of New
17 Mexico on this Defendants' Trial Exhibit M?

18 A. No, the Main has been closed.

19 Q. I'm asking, is it depicted on this
20 exhibit?

21 A. No, sir.

22 Q. Okay. So this -- is this facility right
23 here, that's not the Main?

24 A. No, that's Minimum Restrict.

25 Q. Okay. When did the Main facility close,

1 if you know?

2 A. I'm sorry, that might be the Main. I
3 think this is the Minimum Restrict.

4 Q. Okay. I think that's right.

5 A. Yeah, because these are the houses. Yeah,
6 you're right, that is the Main.

7 Q. It wasn't a test. I wasn't going to tell
8 you you got it wrong.

9 But -- so this is what we've heard
10 referred to as the Main Facility at the Penitentiary
11 of New Mexico?

12 A. Yes.

13 Q. And I think you said -- is that facility
14 still open and operating today?

15 A. No, sir.

16 Q. And if you know -- you may not -- do you
17 know when that facility closed down?

18 A. I believe '98.

19 Q. I'm now going to show you Defendants'
20 Trial Exhibit N. What is this a photograph of, if
21 you know?

22 A. That's the South facility.

23 Q. And this is the facility that you work in;
24 right?

25 A. Yes.

1 Q. Were you working at the PNM South facility
2 on November 14 of 2005?

3 A. Yes.

4 Q. What facility were you working at? What
5 housing unit were you working at?

6 A. Housing Unit 3-B.

7 Q. And let's actually bring up N, again. And
8 if you can point out for the jury approximately
9 where in the South facility is Housing Unit 3-B?

10 A. Right there.

11 Q. So for these facilities, are they -- is it
12 sort of two housing facilities inside each one of
13 these little triangle shapes?

14 A. Yes. The one right next to the one I
15 circled is 3-A.

16 Q. So that's where you were working on
17 November -- I think you said 14th of 2005; is that
18 correct?

19 A. Yes.

20 Q. And what were your duties that day?

21 A. To operate the controls, open the doors,
22 close the doors.

23 Q. I think the jury has heard about the
24 control tower. Is that where you were working that
25 day?

1 A. Yes, sir.

2 Q. And how many corrections officers are in
3 the control tower with you at this point?

4 A. I'm the only one that works there. And I
5 have two pod officers, also.

6 Q. Okay. And did something happen on
7 November 14 of 2005?

8 A. Yes.

9 Q. What happened?

10 A. We had an inmate get stabbed in the unit.

11 Q. And who was the inmate who was stabbed?

12 A. I can't remember his name.

13 Q. Who was the inmate who stabbed the other
14 inmate?

15 A. Daniel Sanchez.

16 Q. I'm going to show you what's been admitted
17 into evidence as Government's Exhibit 548. Do you
18 know who is depicted in this photograph?

19 A. Yes, sir.

20 Q. Who is that?

21 A. That's Daniel Sanchez.

22 Q. And is this the same Daniel Sanchez who
23 stabbed an inmate on November 14, 2005?

24 A. Yes.

25 Q. And I'm going to show you Government's

1 Exhibit 560. Is that the same Daniel Sanchez?

2 A. Yes, sir.

3 Q. And Government's Exhibit 83. Who is that,
4 if you know?

5 A. It's Daniel.

6 Q. Okay. In connection with -- in connection
7 with the stabbing that occurred on November 14 of
8 2005, did you write a witness statement or a report
9 for the Corrections Department that day?

10 A. Yes, sir.

11 Q. All right. And would that report that you
12 wrote help refresh your recollection as to who the
13 inmate was that was stabbed?

14 A. Yes.

15 MR. BECK: Your Honor, may I approach the
16 witness?

17 THE COURT: You may.

18 BY MR. BECK:

19 Q. And I'm going to refer to Bates No. U.S. v
20 Baca 3436. I'm handing you your staff members'
21 supporting memorandum form. Do you recognize the
22 signature on the bottom?

23 A. Yes.

24 Q. And whose signature is that?

25 A. That's mine.

1 Q. Go ahead and read through -- just the
2 bottom part of that paragraph, and look up at me
3 when your memory is refreshed as to who the inmate
4 was who was stabbed.

5 A. Okay, do you want me to read it out loud?

6 Q. No. Just does that refresh your
7 recollection who was stabbed?

8 A. Yes.

9 Q. And who is the inmate who Daniel Sanchez
10 stabbed on November 14, 2005?

11 A. Daniel Munoz.

12 Q. When you were working in the pod, what
13 happened? How did you observe this?

14 A. I was up in the control, and the inmates
15 were already in the shower.

16 Q. Who was in the showers?

17 A. Yeah, it's two-tier, Dan Dan, Daniel
18 Sanchez, was in the top shower, and Munoz was in the
19 bottom shower.

20 Q. Okay. Let me stop you there. This pod,
21 Housing Unit 3-B, which pod did this happen in,
22 inside of Unit 3-B?

23 A. V pod.

24 Q. And was V pod an SNM housing unit?

25 A. Yes.

1 Q. Was Mr. Munoz, the inmate who was stabbed,
2 was he SNM?

3 A. No, I don't believe so.

4 Q. And what was his status when he had been
5 moved into that pod?

6 A. They had just moved him in there, but I
7 think they placed him wrong.

8 Q. Okay. And -- and was he on any certain
9 status? Was there a name for the status that he was
10 under, having just been moved into the pod?

11 A. Yeah, he was under PHD.

12 Q. What does that mean?

13 A. He was -- we call it a red tag, a red tag
14 on the door, meaning that he can't come out with any
15 other inmates in the pod.

16 Q. So when he's escorted to the shower and
17 put into the shower, are there any certain
18 restrictions, or -- how is he put in the shower?

19 A. He's supposed to be handcuffed in and out;
20 out of the cell, to the shower, and handcuffed from
21 the shower back to his room.

22 Q. So I think you said you were up in the
23 control tower and you observed the inmates in the
24 showers. Where was Mr. Sanchez?

25 A. Top shower.

1 Q. And where was Mr. Munoz?

2 A. The bottom shower.

3 Q. And what happened?

4 A. So the officer forgot to shut the top
5 shower, so when he went to go open to let Munoz out
6 of the bottom shower, he cuffed him, opened the
7 shower door, and as they were walking back, he
8 observed inmate Sanchez running out of the top
9 shower down the stairs towards inmate Munoz and the
10 other officer.

11 Q. And then what happened?

12 A. Daniel Sanchez pushed them both into the
13 cell. And as he did that, I got on my radio, hit my
14 emergency pin, and broke the seal to the weapon.

15 Q. You said -- you said a couple of things
16 there. What is your emergency pin? What does that
17 mean?

18 A. On our radios, we have a little orange,
19 red -- reddish pin on there, a little button we
20 push. And that lets our main control know that
21 there is an emergency somewhere in the facility, and
22 they look up your -- what radio number you are, and
23 they'll see where you're working and they'll ask you
24 what happened.

25 Q. And did that happen on November 14 of

1 2005?

2 A. Yes.

3 Q. And I think you said you went and got a
4 shotgun somehow. What happened?

5 A. Yeah, we had it -- we have it mounted on
6 the control center, and you have to break the seal
7 to pull it out. So when I went to get it, since
8 there was only one of us working the control center,
9 I had to turn my back to get the gun, and then walk
10 to the window. But by the time I got the weapon and
11 called for backup, I went to the window, the officer
12 was telling me to close the doors.

13 Q. And what did you see when you got to that
14 window?

15 A. I saw the officer running towards the pod
16 door, trying to leave the unit, and yelling at me to
17 close 4 and 5, B-4 and 5.

18 Q. When you saw Mr. Sanchez push the officer
19 and Mr. Munoz into the cell room, did you see the
20 officer do anything to defend himself?

21 A. Yes. He pulled out his pepper spray and
22 he sprayed both the inmates.

23 Q. And then the next thing you saw, the
24 officer was running to the pod door; is that right?

25 A. Yes.

1 Q. The shotgun -- the shotgun that you pulled
2 after you broke the seal, did they contain live
3 rounds or what do they contain?

4 A. No, less than lethal.

5 Q. What does that mean?

6 A. Beanbag rounds and rubber batons.

7 Q. What happened after the officer ran to the
8 pod door and asked you to close the doors?

9 A. I closed both doors so both inmates were
10 locked in their own cells. Munoz was in 5, and
11 Daniel Sanchez was in 4. And by the time I let him
12 out, I had responders coming from the dining room
13 entrance and from the front entrance.

14 Q. And what happened next?

15 A. They went in there and they took out
16 Munoz, because he called -- well, the inmates could
17 call us on the intercom system, and we could answer
18 them. And he told me that he had been stabbed. So
19 then, from there, they went in there with the nurse,
20 and they took him out, and took him to medical right
21 away.

22 Q. And what happened after they took out Mr.
23 Munoz and took him to medical?

24 A. I didn't see him again after that, because
25 I was only working -- I was working overtime till

1 10:00. And by the time all this happened, it
2 already was time to go home, so I got relieved by
3 another officer.

4 Q. Do you know what Mr. Sanchez stabbed Mr.
5 Munoz with?

6 A. I believe it was the screw for the mop
7 bucket, the ringer.

8 Q. And approximately how long is the screw
9 from the ringer in the mop bucket?

10 A. They're pretty long, maybe like 8, 9
11 inches.

12 Q. Okay.

13 A. And he had it wrapped in his hand.

14 MR. BECK: Okay. May I have a moment,
15 Your Honor?

16 THE COURT: You may.

17 BY MR. BECK:

18 Q. Do you know if Mr. Munoz was affiliated
19 with any prison gang?

20 A. No, I'm not too sure.

21 Q. All right. Do you know -- I think you
22 said earlier, was he an SNM member?

23 A. No, I don't believe so.

24 MR. BECK: Nothing further, Your Honor.

25 THE COURT: Thank you, Mr. Beck.

1 Cross-examination of Mr. Aranda? Ms.
2 Jacks?

3 MS. JACKS: Thank you, Your Honor.

4 THE COURT: Ms. Jacks?

5 CROSS-EXAMINATION

6 BY MS. JACKS:

7 Q. Good afternoon, Mr. Aranda.

8 A. Good afternoon.

9 Q. Just a few follow-up questions. This
10 person that was stabbed, Mr. Munoz, how long had he
11 been housed in that housing unit, if you know?

12 A. I believe it was just a few days, if that.
13 That's how I didn't really -- I don't even know his
14 name.

15 Q. He was there a short time?

16 A. Yes.

17 Q. At the most, three days or so?

18 A. The most, yeah.

19 Q. And I think you said -- was he in cell
20 V-4?

21 A. Munoz was in 5.

22 Q. Okay. V-5, and Mr. Sanchez was in cell
23 V-4?

24 A. Yes, ma'am.

25 Q. And are those two cells directly next to

1 each other?

2 A. Yes.

3 Q. So presumably -- well, based on your
4 knowledge as a correctional officer, inmates in V-4
5 and V-5 could communicate with each other; is that
6 right?

7 A. Yes.

8 Q. And you said that Mr. Munoz' cell was
9 red-tagged?

10 A. Yes.

11 Q. Meaning that he was not to be let out of
12 his cell when anybody else was on the tier?

13 A. Correct.

14 Q. And you said he was PHD?

15 A. Yes.

16 Q. I'm assuming that doesn't mean an advanced
17 college degree?

18 A. You would hope, right?

19 Q. What does it mean?

20 A. Prehearing Detention. He had done
21 something in a different facility. And what I heard
22 is that he did something to --

23 MR. BECK: Objection, Your Honor, hearsay.

24 THE COURT: Is it being offered for the
25 truth?

1 MS. JACKS: I think the witness answered
2 the question.

3 THE COURT: Well, then we better strike
4 it. Disregard it.

5 MS. JACKS: The part I would ask that what
6 be allowed is what PHD stands for.

7 THE COURT: He can answer that.

8 BY MS. JACKS:

9 Q. That's all I need you to answer.

10 A. Prehearing Detention.

11 Q. All right. So that inmate was pending
12 some sort of disciplinary hearing?

13 A. Yes.

14 Q. And that's why he was placed in that pod
15 in the cell V-5?

16 A. I believe he was just placed there because
17 there was nowhere else to put him.

18 MS. JACKS: Thank you. I have nothing
19 further.

20 THE COURT: Thank you, Ms. Jacks.

21 Anyone else have cross-examination of
22 Mr. Aranda?

23 MS. DUNCAN: We don't.

24 THE COURT: Anything further, Mr. Beck?

25 MR. BECK: No, Your Honor.

1 THE COURT: All right. Mr. Aranda, you
2 may step down.

3 Is there any reason Mr. Aranda cannot be
4 excused from the proceedings, Mr. Beck?

5 MR. BECK: Not from the Government, Your
6 Honor.

7 THE COURT: Defendants agree he can be
8 excused?

9 All right. Not hearing any objection, you
10 are excused from the proceedings. Thank you for
11 your testimony.

12 All right. Does the Government have its
13 next witness or evidence?

14 MR. CASTELLANO: Yes, Your Honor. The
15 United States calls Katie Brusuelas.

16 THE COURT: Ms. Brusuelas, if you'll come
17 up and stand next to the witness box on my right,
18 your left, before you're seated, my courtroom
19 deputy, Ms. Standridge, will swear you in.

20 MS. ARMIJO: Your Honor, may we approach?

21 THE COURT: You may.

22 (The following proceedings were held at
23 the bench.)

24 MR. BECK: Your Honor, this witness has
25 retired from the FBI. She has a different job now.

1 She recently -- we learned today she recently
2 pleaded guilty to a DUI misdemeanor offense. We do
3 not believe that it is Giglio, that it is relevant
4 that it's admissible. It's not a felony offense.
5 She's not charged by the federal government, she's
6 charged by the state. But we learned this today.
7 So we thought we should bring it everyone's
8 attention so we can make our record that we don't
9 believe it's Giglio.

10 THE COURT: Do they intend to question her
11 about it?

12 MS. DUNCAN: I do think it's Giglio, but
13 no.

14 THE COURT: All right. It's been
15 disclosed, but I don't see any reason for it to come
16 in. If somebody thinks otherwise as testimony
17 develops, y'all can approach before you try to get
18 it in.

19 MS. DUNCAN: Yes, Your Honor.

20 (The following proceedings were held in
21 open court.)
22
23
24
25

1 KATHERINE BRUSUELAS,
2 after having been first duly sworn under oath,
3 was questioned, and testified as follows:

4 THE CLERK: Please be seated. State and
5 spell your name for the record.

6 THE WITNESS: Katherine Brusuelas,
7 K-A-T-H-E-R-I-N-E, B-R-U-S-U-E-L-A-S.

8 THE COURT: Ms. Brusuelas.
9 Mr. Castellano?

10 DIRECT EXAMINATION

11 BY MR. CASTELLANO:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. How are you currently employed?

15 A. Currently, I work as a contract employee
16 for the Department of Drug Enforcement Association.

17 Q. How long have you worked there?

18 A. Just a couple weeks.

19 Q. What were you doing before your current
20 post?

21 A. Prior to that, I was a Special Agent with
22 the FBI for over 21 years.

23 Q. Are you now retired?

24 A. Yes, I am.

25 Q. And what types of training and experience

1 did you have as an FBI agent?

2 A. I had lots of training in how to conduct
3 investigations, and evidence, interviewing
4 techniques. I had a wide variety over the years.

5 Q. And did you specialize -- or like you
6 said, did you have a variety of crimes that would
7 you investigate?

8 A. There was a variety of crimes.

9 Q. Turning to February of 2015, what types of
10 responsibilities did you have back then?

11 A. I was currently assigned to a squad that
12 worked gang and drug activity. And I was also
13 assigned to work a newly-created prison initiative,
14 where I worked violations up in the prisons.

15 Q. Can you tell the members of the jury what
16 your responsibilities were when you would visit the
17 prisons?

18 A. We would investigate different activities
19 of either corrupt employees bringing in drugs, or we
20 would investigate different gang activities that
21 might be happening, or any illegal activity that was
22 happening in and around the prisons.

23 Q. So, then, would you work with Corrections
24 personnel to try to investigate any misconduct that
25 would happen at the facility?

1 A. Yes, I would. I would spend one to two
2 days a week up in Santa Fe at the prison up there.

3 Q. And how would it be that you would receive
4 information from Corrections personnel?

5 A. Some of the STIU guys would pass on
6 information that they would get from different
7 inmates, whether they would cooperate, or maybe tips
8 about guards or somebody smuggling drugs in, or just
9 inmates who wanted to talk about various crimes.

10 Q. And given the fact that you were visiting
11 the facility as a law enforcement officer, and
12 talking to inmates, could that potentially be tricky
13 from time to time?

14 A. Yes.

15 Q. What -- what concerns would you have about
16 approaching someone as law enforcement?

17 A. Well, you don't always want people to know
18 exactly who you are, where you live, personal things
19 about you. And you are concerned about how truthful
20 they are going to be with the information they
21 provide to you.

22 Q. And in terms of -- would it generally be a
23 good idea for the inmates to know that another
24 inmate was meeting with law enforcement?

25 A. No. We would not disclose that.

1 Q. What types of ways would you try to then
2 meet with inmates so it would not be well known?

3 A. We would try to arrange meets outside of
4 the prison for various reasons, like inmates would
5 need to be transported somewhere.

6 Q. And then when -- if you visited the
7 facility, would you identify yourself with an FBI
8 jacket or anything like that? What would you
9 normally wear?

10 A. No, I usually would dress down, in
11 plainclothes, or wear clothing similar to what the
12 STIU guys would wear.

13 Q. And so just looking at you, then, would
14 people know you were an FBI agent?

15 A. They would not.

16 Q. I want to ask if you met someone named
17 Eric Duran on February 19 of 2015.

18 A. Yes, I did.

19 Q. And even though you met him on that day,
20 had you heard before that time that he wanted to
21 meet with someone from the FBI?

22 A. Yes. Captain Sapien up at Santa Fe had
23 been dealing with an inmate, and had received a
24 letter at least a week prior to me meeting Duran,
25 that Mr. Duran had wanted to cooperate. He had some

1 information that he'd like to provide.

2 Q. So you said it was at least a week before
3 you met him?

4 A. Yes.

5 Q. And then how long did it take you to get
6 out to actually meet him?

7 A. It -- it took a little while for the
8 logistics. You -- he was going to be providing
9 information on drugs and some unsolved murders, so I
10 needed to get appropriate people to go with me who
11 would know about these crimes in the Albuquerque
12 area. And we had to set up a meeting place that
13 would be secure and we'd have time to actually talk
14 with him, and others wouldn't know what we were
15 doing. So it took, you know, a little bit of time
16 for that.

17 Q. Where did you eventually meet him?

18 A. We met at the FBI office in Santa Fe.

19 Q. And if you recall, do you know which
20 facility he was coming from to meet you in Santa Fe?

21 A. Yeah, he was coming from PNM.

22 Q. And as best as you can recall, who was
23 present at this meeting?

24 A. There was Chris Cupit and Captain
25 Sapien -- Sergio Sapien. We had a couple of task

1 force officers with me, Eugene Ethridge from the
2 Albuquerque Police Department, and Eric Kubler from
3 the Bernalillo County Sheriff's Office.

4 Q. Is it normal to have that many people
5 there, or were you expecting to have kind of a broad
6 base of information?

7 A. We were expecting a broad base of
8 information.

9 Q. And how did you -- why did you believe
10 that you would have a broad base of information?

11 A. Well, he had informed the Captain that
12 he --

13 MS. DUNCAN: Your Honor, I object. It's
14 soliciting hearsay.

15 THE COURT: What are you trying to prove?

16 MR. CASTELLANO: Only the explanation for
17 why that many people were there from different
18 agencies.

19 THE COURT: Well, ask her if she knows,
20 has personal knowledge as to why she knows it. If
21 she doesn't, let's move on.

22 MR. CASTELLANO: I'll just rephrase the
23 question, Your Honor.

24 THE COURT: All right.

25

1 BY MR. CASTELLANO:

2 Q. In other words, did you -- did you receive
3 information that there would be a broad amount of
4 topics discussed?

5 A. Yes.

6 Q. Was this conversation recorded?

7 A. Yes, it was.

8 Q. And eventually was there a transcript made
9 from the recording?

10 A. Yes.

11 Q. And have you reviewed the recording and
12 the transcript before testimony today?

13 A. Yes.

14 Q. Did that help refresh your recollection
15 about the events of 2015?

16 A. Yes.

17 Q. Now, was Eric Duran able to provide
18 information about any -- what are called cold case
19 homicides?

20 A. Yes, he did. He provided information on
21 three different --

22 MS. DUNCAN: Your Honor, I'm going to
23 object, this is hearsay.

24 MR. CASTELLANO: I'm not asking for the
25 contents of the conversation, Your Honor, just the

1 topics.

2 THE COURT: Okay. Just -- why don't you
3 lead her through this, just get the topics. Just
4 lead her so she doesn't start talking about the
5 actual statements.

6 BY MR. CASTELLANO:

7 Q. So did Mr. Duran provide information on
8 what are called cold case homicides?

9 A. Yes.

10 Q. What is a cold case homicide?

11 A. It's an older homicide that has not been
12 solved.

13 Q. How many cold case homicides did he
14 provide information on?

15 A. Three.

16 Q. And we won't worry about the names right
17 now, but did he provide names of people who were
18 involved in those homicides?

19 A. Yes.

20 Q. Do you recall if he provided any
21 information about any conspiracies to murder
22 Corrections officials?

23 A. Yes.

24 Q. Would you describe those Corrections
25 officials as high-ranking or high in the

1 administration?

2 A. Yes, I would.

3 Q. Was there also discussion of drug
4 trafficking activity?

5 A. Yes.

6 Q. And was it your understanding that
7 Mr. Duran had experience with drug trafficking?

8 A. Yes.

9 Q. And, at some point, was there discussion
10 about whether or not he could help the FBI or other
11 agencies, possibly take down drug trafficking
12 organizations?

13 A. Yes.

14 Q. As best as you can remember, approximately
15 how long did this meeting last?

16 A. It was approximately two hours.

17 Q. And with -- in terms of the information
18 about the homicides, did one of those involve Javier
19 Molina?

20 A. Yes, it did.

21 Q. Did another involve someone named Sammy
22 Chavez?

23 A. Yes.

24 Q. And did the third involve someone named
25 Freddie Sanchez?

1 A. Yes.

2 Q. And was that information important to you
3 and others since they were considered cold case
4 homicides?

5 A. Yes.

6 Q. And, once again, without telling us names,
7 did he have information on who called the Javier
8 Molina murder?

9 A. Yes, he did.

10 Q. And did he also have information on who
11 called some of those other murders?

12 A. Yes.

13 Q. Did he give you any information about the
14 SNM prison gang?

15 A. Yes, he did.

16 Q. Including anybody who was considered a
17 leader in that gang?

18 A. Yes.

19 Q. As a result of this meeting, were you
20 aware of whether or not Eric Duran was in trouble in
21 any way with the Corrections Department?

22 A. No, I was not.

23 Q. Was there any indication he was meeting
24 with you because he was in any kind of trouble?

25 MS. DUNCAN: Your Honor, I object. This

1 is a back way of getting into --

2 THE COURT: I think that one is, too.

3 Sustained.

4 BY MR. CASTELLANO:

5 Q. Were you aware of any pending disciplinary
6 action against Mr. Duran?

7 A. I was not.

8 Q. Now, as a result of this meeting, did Eric
9 Duran, in addition to providing information, did he
10 agree to otherwise help law enforcement?

11 A. Yes, he did.

12 Q. How did he agree to help law enforcement,
13 or in what way would he help?

14 A. He agreed to provide information, and he
15 agreed to be opened as a source for the FBI.

16 Q. So even as an inmate, was he opened as a
17 source?

18 A. Yes.

19 Q. Tell us a little bit about the process of
20 opening him as a source. Did you tell him what was
21 expected of him?

22 A. Yes. We do we provide an admonishment,
23 and let him know that all information he's providing
24 must be truthful, and he's not being forced to
25 provide anything. He needs to follow any directions

1 we might give him, he's not promised any payment,
2 and he's told he's not an agent of the Government,
3 and cannot do any illegal activity without prior
4 authorization.

5 Q. So, in other words, if you employ somebody
6 as a confidential source, are there times when you
7 send them in to do illegal activities on your
8 behalf?

9 A. Yes.

10 Q. Would an example of that be an undercover
11 drug buy?

12 A. Yes.

13 Q. And so for someone who purchases drugs
14 without the FBI's permission oversight, is that what
15 creates problems for them?

16 A. Yes.

17 Q. And is that prohibited?

18 A. That's correct.

19 Q. And is that one of the reasons you give
20 admonishments to human sources?

21 A. Yes.

22 Q. What did Eric Duran agree to do for the
23 FBI?

24 A. He agreed to get -- to make recordings --
25 recordings of conversations he had with some of the

1 other inmates.

2 Q. And were any particular inmates selected
3 for any particular reason?

4 A. Yes.

5 Q. So, in other words, if he gave you
6 information about somebody, did you then try to have
7 him get recordings of that person?

8 A. Yes. We had certain people we were
9 looking at within the facility who were involved in
10 other criminal activity, and possibly involved in
11 some of these cold cases that we were trying to get
12 information.

13 Q. So, after this initial meeting, about how
14 long did it take to open him up as a source?

15 A. I opened him up about a month after the
16 initial meeting.

17 Q. And was it at that time that you gave him
18 the admonishment you just told the jury about?

19 A. That's correct.

20 Q. And as part of his cooperation, then, did
21 you provide him any type of recording device?

22 A. Yes. We provided him a recording device,
23 and the initial one we gave him had problems with it
24 where it was not working on a regular basis.

25 Q. And without -- and are these devices

1 typically kept somewhat secret or covert so that
2 inmates don't see them or know what they are?

3 A. Yes.

4 Q. And can you tell the members of the jury
5 whether the device had an on and off switch?

6 A. Yes, it did.

7 Q. Did the device have the ability to fast
8 forward, rewind, or delete any information?

9 A. No.

10 Q. You mentioned there were some problem with
11 at least one device. What was the problem?

12 A. He was unable to tell whether it was
13 actually on or off, and there were some problems
14 with the battery actually holding a charge.

15 Q. And how did you -- how did you first learn
16 that there was a problem with the device?

17 A. After we received it back from him and
18 downloaded and tried to listen to the recordings he
19 said he had made.

20 Q. So, in other words, did he indicate to you
21 that he had recorded information from somebody and
22 then when you downloaded the information, you
23 couldn't find it?

24 A. That's correct.

25 Q. And you mentioned something about the

1 battery. Did the device -- did you receive it with
2 a dead battery?

3 A. Yes.

4 Q. What kind -- what types of concerns did
5 you have introducing a device like that into a
6 prison facility?

7 A. Well, we always have the concerns that it
8 will be found, and an inmate will notice something,
9 or a guard will take the item from him.

10 Q. And what's the concern of another inmate
11 finding some sort of recording device on another
12 inmate?

13 A. That puts his life at risk.

14 Q. And are you aware of who he initially
15 tried to record, if you remember any names?

16 A. I cannot recall the name exactly.

17 Q. Can you remember what types of
18 conversations he was trying to capture, in terms of
19 the type of crime?

20 A. Yes. It was related to the cold case
21 homicides.

22 Q. What did you do after learning that the
23 device had failed?

24 A. We replaced it with a different device.

25 Q. And can you tell the members of the jury

1 whether that device had a better battery capacity?

2 A. Yes, it did.

3 Q. And did you have more success with the --
4 with the later device?

5 A. Yes.

6 Q. And, as a result, was Mr. Duran able to
7 capture recorded conversations on the device?

8 A. Yes.

9 Q. In terms of the device, can you tell us
10 how it -- how it works in terms of it records
11 information, and how do you learn information is on
12 there, or how do you retrieve the information?

13 A. Once we get the device back from him, we
14 turn it in to an individual in our office who has
15 equipment that she downloads the information from
16 the device onto a disc.

17 Q. And from there, then, do you have a disc
18 where you can play it and hear what was on the
19 recording?

20 A. Yes.

21 Q. Can you -- can you hear anything from the
22 device itself, or does it have to be downloaded into
23 the system?

24 A. No, it must be downloaded.

25 Q. And as best as you recall, about how long

1 while he was working for you, was Mr. Duran able to
2 record other inmates?

3 A. I only had him open for a few months, then
4 he was passed off to another agent. So I'm not
5 exactly sure how long he still did recordings.

6 Q. And why was he handed off to another
7 agent?

8 A. I was being transferred to a different
9 squad, and was going to be working in a different
10 violation.

11 Q. Who did you hand Mr. Duran off to?

12 A. To Special Agent Bryan Acee.

13 Q. So with this meeting in February of 2015
14 being the first meeting, at some point, are you
15 aware of the FBI receiving information or letters
16 related to a conspiracy to murder Mr. Marcantel and
17 Mr. Santistevan?

18 A. Yes.

19 Q. And as a result of having received that
20 information, did the FBI then open up a full
21 investigation into those murder conspiracies?

22 A. Yes.

23 Q. And after you left the squad, then, did
24 Agent Acee take over that part of the investigation?

25 A. Yes.

1 Q. After that time, did you then have any
2 other contact with the person known as Eric Duran?

3 A. I did not.

4 Q. And if you know, was he also known as
5 Crazo?

6 A. I don't recall.

7 Q. Did you know him just by Eric Duran?

8 A. Yes.

9 Q. And if you recall, when did you turn him
10 over to Agent Acee?

11 A. That would have been at the beginning of
12 August of 2015.

13 MR. CASTELLANO: May I have a moment, Your
14 Honor?

15 THE COURT: You may.

16 MR. CASTELLANO: Pass the witness, Your
17 Honor.

18 THE COURT: Thank you, Mr. Castellano.
19 Any cross-examination? Ms. Duncan?

20 MS. DUNCAN: Yes, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. DUNCAN:

23 Q. Good afternoon, Agent Brusuelas.

24 A. Good afternoon.

25 Q. I'd like to talk to you a little bit

1 about -- let me start over. At one point, you were
2 the Coordinator for Confidential Human Sources;
3 correct?

4 A. That's correct.

5 Q. So you worked with people other than Eric
6 Duran?

7 A. Not during that period. Prior to me
8 working with Eric Duran, I was a coordinator.

9 Q. So would you work directly with
10 confidential human sources when you were a
11 coordinator, or were you overlooking other agents'
12 work?

13 A. I was overlooking other agents.

14 Q. Okay. So I'd like to talk to you a little
15 bit about the process of opening up a confidential
16 human source, and then how you monitor them. You
17 mentioned that, when you open up a source, that you
18 give them admonishments?

19 A. That's correct.

20 Q. And I think you said you admonished them
21 that they have to be truthful with you; is that
22 correct?

23 A. That's correct.

24 Q. They can't engage in any unauthorized
25 criminal activity?

1 A. That's correct.

2 Q. That they're not promised payment; is that
3 right?

4 A. Yes.

5 Q. And I think they're also told, if they are
6 given payment, that they have to report it on their
7 tax returns; correct?

8 A. That's correct.

9 Q. And how -- are there any other
10 admonishments that are given to sources?

11 A. There is a few other, but they're right
12 along that line, and others that I already
13 mentioned.

14 Q. And are these admonishments given only
15 once, or are they given multiple times?

16 A. They're given annually.

17 Q. And always those same admonishments?

18 A. That's correct.

19 Q. At the time you open -- that you open up a
20 file, do you do a background check?

21 A. Yes.

22 Q. And what do you do? How do you complete
23 that background check?

24 A. We make sure they have not been a subject
25 of an investigation before; if they're somebody

1 we've looked at before; if they've been opened as a
2 prior source, and they've been closed for some
3 reason. We run their criminal history.

4 Q. And did you do that with Eric Duran?

5 A. Yes.

6 Q. What else do you do? Do you do any other
7 kind of background check with the source before you
8 open the file?

9 A. No.

10 Q. And once you have the file open, is there
11 a way for you or for the FBI to monitor whether a
12 source is engaged in additional -- or in other
13 criminal activity?

14 A. There is no actual specific measuring tool
15 that we use. I mean, we do keep track of the
16 source, talk to them on a regular basis. And in
17 instances like inmates, we talk with the correction
18 officers and people who deal with them, and try to
19 verify what they're telling us, and check on their
20 behavior.

21 Q. And did you do that while you were
22 supervising Eric Duran?

23 A. I only had him open for a couple of
24 months, so no. I mean, I talked regularly with
25 STIU. But I had only met with him a few times, and

1 did not use him very often.

2 Q. What about for sources who are not
3 incarcerated, who are out on the street, is there a
4 way that the FBI tracks to see, for example, whether
5 they've been arrested for another offense?

6 A. We have ways of finding out if they've
7 been arrested. We get notified if any of our
8 sources are arrested. And again, we do -- we're
9 required to meet with our sources on a regular
10 basis, and check in with them. So I'm not quite
11 sure what technique you're asking about.

12 Q. I'm asking an open question because I
13 don't really know. I'm just wondering if you have
14 someone, for example, like Eric Duran, who has a
15 criminal history, and you're using him as an
16 informant out on the streets, if there is a way for
17 the FBI to make sure he's not engaging in criminal
18 activity that's unauthorized by the Bureau?

19 A. Well, of course, we can never be 100
20 percent sure of anything like that, but we do have
21 multiple sources open in areas, and check with other
22 sources. We use, you know, undercover people to get
23 involved in stuff, and sometimes we task them with
24 certain things to do specific testing to see how
25 truthful they're being. And again, we get

1 notification anytime one of our sources is arrested.

2 Q. And if a source is arrested, what happens?

3 A. It depends on what he or she is arrested
4 for.

5 Q. If a source is found to have committed
6 unauthorized criminal activity, for example,
7 unauthorized drug sales or possession, what does the
8 FBI do?

9 A. Well, we contact the United States
10 Attorney's Office, and make sure that they're okay
11 with us continuing to use a source after we
12 re-admonish them, and go over the rules that they
13 have to follow. And if the AUSA office is willing
14 to go forward, and the FBI supervisor, upper
15 management, is willing to go forward, we continue to
16 use them.

17 Q. And under what circumstances would you
18 close an informant?

19 A. If an informant was no longer productive
20 or providing useful information. If we didn't have
21 any ongoing cases, or if the source was not
22 listening, and we had already admonished them again,
23 and then they were continuing to do illegal
24 activities.

25 Q. Are there kinds of illegal activities that

1 a source can be found to have committed that's just
2 an automatic, "We're closing your file"?

3 A. Well, I believe if we had a source who
4 committed a murder while he was open as a source, we
5 would not want to continue using him as a source.

6 Q. What about if a source was found to have
7 abused a child?

8 A. There -- there really is no written rule
9 telling us when we have to close a source. So
10 that's kind of left up to the judgment of the agent
11 and the supervisors and the AUSA's office, and
12 depending on what kind of information that source is
13 providing.

14 Q. Now, Mr. Castellano was asking you about
15 when you first met with Mr. Duran, whether --
16 whether you were aware of any pending disciplinary
17 actions against him. I think you said that you were
18 not?

19 A. I was not.

20 Q. Subsequent to that interview, have you
21 learned that there were pending disciplinary actions
22 against Mr. Duran?

23 A. I've heard that here in the courtroom.

24 Q. So were you aware that a week before
25 Mr. Duran met with you, a correctional officer found

1 a shank in his cell?

2 A. I don't know the exact timeframe of when a
3 shank was found.

4 Q. Were you aware that the day before
5 Mr. Duran met with you, he had threatened to kill a
6 correctional officer?

7 A. I was not aware of that at the time.
8 Again, I've heard that in this courtroom.

9 Q. You testified that you had asked Mr. Duran
10 about cold cases; correct?

11 A. Correct. He had stated that he wanted to
12 provide information.

13 Q. And one of the cold cases that you
14 mentioned was Javier Molina?

15 A. That's correct.

16 Q. Are you aware that the murder of Javier
17 Molina was being prosecuted in New Mexico State
18 Court at the time you met with Eric Duran?

19 A. I was not.

20 Q. You talked about providing Mr. Duran with
21 a recording device that didn't work, and I think you
22 said that you provided that recording device to him
23 a month after you met with him; is that correct?

24 A. It was somewhere around there. We did not
25 open him up immediately.

1 Q. So if you -- how long did Mr. Duran have
2 that inoperable or faulty recording device?

3 A. He probably had it for maybe a week.

4 Q. And when you retrieved the faulty device,
5 did you immediately give him another recording
6 device?

7 A. I don't recall. I don't remember if we
8 had a replacement at that moment, or we had to give
9 it to him a few days later, or something. I don't
10 recall the exact timeframe.

11 Q. And while you were supervising Mr. Duran,
12 how many recording devices did you provide or cause
13 to be provided to him?

14 A. I think there were just two different
15 devices during the time he was being handled by me.

16 Q. And you indicated that the FBI received
17 letters related to the alleged plot to kill Dwayne
18 Santistevan and Gregg Marcantel?

19 A. No, I don't believe the FBI received
20 letters. The FBI was aware of letters.

21 Q. Okay. So they were not provided to the
22 FBI?

23 A. No, they did not come to the FBI.

24 MS. DUNCAN: May I have a moment, Your
25 Honor?

1 THE COURT: You may.

2 MS. DUNCAN: I have no further questions.

3 THE COURT: Thank you, Ms. Duncan.

4 Anybody else anyone else have cross-examination of
5 Ms. Brusuelas?

6 MS. JACKS: I have a few questions.

7 THE COURT: All right.

8 Ms. Jacks.

9 CROSS-EXAMINATION

10 BY MS. JACKS:

11 Q. Good afternoon, Ms. Brusuelas.

12 A. Good afternoon.

13 Q. I just want to follow-up on a couple of
14 the questions that Ms. Duncan asked you about the
15 Molina homicide; is that -- is that okay?

16 A. Yes.

17 Q. And I think what you said is that
18 Mr. Duran provided you some information on cold
19 cases, and you classified the Molina homicide as a
20 cold case?

21 A. I didn't know of the homicide. I was not
22 aware. He came forward and said he would like to
23 provide information. He said there were people out
24 there --

25 MS. DUNCAN: Your Honor, I'm going to

1 object.

2 BY MS. JACKS:

3 Q. What he says is hearsay, so you can't
4 relate that. I'm just asking you to answer the
5 question.

6 A. Can you please repeat the question?

7 Q. So the question is: Did Mr. Duran
8 classify the Molina homicide as a cold case, or is
9 that your classification?

10 A. That would be my classification.

11 Q. Okay. And I think you told Ms. Duncan you
12 were unaware that that case was actually being
13 prosecuted in the State of New Mexico?

14 A. That's correct.

15 Q. And you would agree with me that if a case
16 is being prosecuted by the State of New Mexico, it
17 is by definition not a cold case?

18 A. That is correct.

19 Q. With respect to the homicide of
20 Mr. Molina, do you know where that crime allegedly
21 took place?

22 A. I would have to refer to my notes or the
23 transcript. But I believe it was -- it might have
24 been down in Southern, here in Las Cruces.

25 Q. In a New Mexico State prison?

1 A. Yes.

2 Q. And your memory is that it might have been
3 at Southern New Mexico Correctional Facility?

4 A. I believe so. I -- I do not recall
5 exactly.

6 Q. In your meetings with Mr. Duran, do you
7 know where Mr. Duran was at the time of the Molina
8 homicide?

9 A. I would have to refresh my memory with
10 notes or the transcript. I do not. I was not
11 looking into that homicide at the time, so I did not
12 know details.

13 Q. Okay. Did your investigation include
14 determining where Mr. Duran was located at the time
15 of that homicide?

16 A. Did my investigation --

17 Q. Include that?

18 A. No, I was not investigating the homicide.
19 So I was -- it was an initial meeting with him. He
20 was providing information as to what he had and what
21 he could provide. We hadn't even opened him as a
22 source, and we didn't know if we were going to open
23 him at that point.

24 Q. With respect to the Molina homicide, was
25 the information that Mr. Duran provided you

1 information as a percipient witness; in other words,
2 information that he personally observed at the time
3 of the crime, if you remember?

4 A. Again, I'd have to look at the
5 transcripts. I don't want to get the different
6 homicides confused.

7 Q. As you sit here right now, you can't
8 recall one way or another whether he was a
9 percipient witness to that homicide?

10 A. No, I don't believe he was a participant
11 at the homicide, no.

12 Q. No, "Percipient" meaning seeing or
13 observing, having personal --

14 A. I understand what it means.

15 Q. Okay.

16 A. No, I don't know.

17 Q. You can't answer that question one way or
18 another?

19 A. No, I cannot.

20 MS. JACKS: Thank you. I have nothing
21 further.

22 THE COURT: Thank you, Ms. Jacks.

23 Anyone else have any cross-examination?

24 MR. VILLA: No, Your Honor.

25 THE COURT: All right.

1 Okay, Mr. Castellano, do you have redirect
2 of Ms. Brusuelas?

3 MR. CASTELLANO: Yes, sir.

4 THE COURT: Mr. Castellano?

5 REDIRECT EXAMINATION

6 BY MR. CASTELLANO:

7 Q. Now, when you're receiving information
8 from somebody who is cooperating with law
9 enforcement, is it always information that the
10 person has seen or heard firsthand?

11 A. No.

12 Q. And sometimes do -- do people give you
13 leads from information they've heard from other
14 people?

15 A. Yes.

16 Q. And in terms of prison culture, were you
17 aware of how information traveled through the
18 different facilities in New Mexico?

19 A. Yes.

20 Q. And in terms of being familiar with prison
21 culture, what are some of the ways you knew that
22 information traveled even between facilities?

23 A. Through word-of-mouth, through prisoners
24 being transferred from one facility to another was a
25 common way.

1 Q. So if someone who is initially giving you
2 information, at this point are you just gathering
3 information so you can analyze it and see what its
4 value is?

5 A. Yes, and verify.

6 Q. And under these circumstances, then, do
7 these leads eventually lead to other leads?

8 A. Yes.

9 Q. Now, you were also asked about how --
10 certain ways you can test informants. Have you had
11 operations before where you've had more than one
12 informant, but you did not inform either of them
13 that the other was an informant?

14 A. Yes, many times.

15 Q. So is that a way for you to stand back and
16 see if one informant can at least -- sometimes catch
17 another informant doing things they're not supposed
18 to when they don't know the other person is an
19 informant?

20 A. Yes.

21 Q. So, for example, if one informant lets you
22 know that a certain person is engaged in criminal
23 activity, and you know that's not authorized by the
24 FBI, and that person is an informant, does that
25 allow you then to test them and also stop using them

1 as an informant?

2 A. Yes.

3 MR. CASTELLANO: I pass the witness, Your
4 Honor.

5 THE COURT: Thank you, Mr. Castellano.

6 All right. Ms. Brusuelas, you may step
7 down.

8 Is there any reason that Ms. Brusuelas
9 cannot be excused from the proceedings? Mr.
10 Castellano?

11 MR. CASTELLANO: No, Your Honor.

12 THE COURT: Anybody have any objections?

13 MR. JACK: No.

14 THE COURT: Not hearing any objections,
15 you're excused from the proceedings. Thank you for
16 your testimony.

17 All right. Does the Government have its
18 next witness or evidence?

19 MS. ARMIJO: Yes, Your Honor. Tom Neale.

20 THE COURT: Mr. Neale, if you'll come up
21 and stand next to the witness box on my right, your
22 left, before you're seated, Ms. Standridge, my
23 courtroom deputy, will swear you in.

24

25

1 THOMAS NEALE,
2 after having been first duly sworn under oath,
3 was questioned, and testified as follows:
4 THE CLERK: Please be seated and state and
5 spell your name for the record.
6 THE WITNESS: Yes, ma'am. My name is
7 Thomas Neale, N-E-A-L-E.
8 THE COURT: Mr. Neale.
9 Ms. Armijo?
10 MS. ARMIJO: Thank you, Your Honor.
11 DIRECT EXAMINATION
12 BY MS. ARMIJO:
13 Q. And how are you employed?
14 A. I'm a Special Agent with the Federal
15 Bureau of Investigation.
16 Q. And how long have you worked for the FBI?
17 A. I was hired with the FBI in April of 2015.
18 Q. And prior to that, do you have any law
19 enforcement experience?
20 A. Prior to that I was a police officer in
21 Richmond, Virginia, and was hired there in
22 approximately May of 2008.
23 Q. And after joining the FBI, were you
24 eventually assigned to work in New Mexico?
25 A. Yes, I was.

1 Q. Where are you assigned?

2 A. I was assigned to the Albuquerque field
3 office.

4 Q. And does the Albuquerque field office
5 cover or -- all of New Mexico?

6 A. It does, yes.

7 Q. Now, when you started working with the
8 FBI, were you assigned to assist with an
9 investigation?

10 A. Yes.

11 Q. What investigation was that?

12 A. That was the investigation of the
13 Sindicato de Nuevo Mexico gang.

14 Q. Now -- and what was the scope of the
15 investigation?

16 A. The scope of the investigation was
17 investigating -- investigating the alleged
18 conspiracy to kill Secretary Marcantel, as well as
19 drug and firearm involvement of members of the gang,
20 both in the prisons and on the streets.

21 Q. And did it also include other homicides
22 and other activities, as well?

23 A. It did. It was essentially taking a look
24 at the gang's activities since its inception.

25 Q. Now, as part of that investigation, you

1 mentioned that there was also an investigation into
2 firearms and drug trafficking. Is it fair to say
3 that there were two different types of
4 investigations going on, some involving people on
5 the street that were involved in drug trafficking
6 and firearms?

7 A. Yes.

8 Q. That were SNM Gang members?

9 A. Correct, gang members or associates.

10 Q. In addition to the investigation for which
11 the case that we're here on?

12 A. Yes.

13 Q. Now -- and was one of those persons that
14 was being investigated in 2015, Christopher Garcia?

15 A. Yes.

16 Q. And was Christopher Garcia a -- an SNM
17 Gang member?

18 A. He was.

19 Q. And as part of the investigation into him,
20 and -- in 2015, do you know whether or not, was he
21 living out on the streets?

22 A. He was living on the streets.

23 Q. And why was it, if you know, that he was
24 targeted?

25 A. From my understanding, his name was

1 mentioned by confidential sources as a member of the
2 SNM Gang on the streets that was involved in the
3 distribution of narcotics in Albuquerque.

4 Q. And so based on that, did the FBI then set
5 out to look into whether or not Christopher Garcia
6 was, in fact, involved in drug trafficking?

7 A. Yes.

8 Q. And what sort of different things did the
9 FBI do in reference to that investigation of
10 Christopher Garcia?

11 A. Primarily utilized the confidential human
12 sources and an undercover officer to attempt to make
13 controlled purchases of narcotics from Mr. Garcia.

14 Q. Okay. Can you explain to the jury what
15 controlled purchases are?

16 A. A controlled purchase is when a
17 cooperating individual or a police officer is used
18 to go and sort of in an undercover capacity, to make
19 contact with the target of the investigation in an
20 attempt to make a purchase of either drugs or
21 firearms, or whatever the goal of the investigation
22 is.

23 What makes it controlled is there are
24 steps that the investigating officers take, such as
25 searching the source prior to making contact with

1 the target. Obviously supplying the money that the
2 source will use, trying to maintain surveillance on
3 the source as they're conducting the operation. And
4 then being prepared to receive the evidence that's
5 purchased.

6 Basically trying to make sure that we have
7 as much control as it implies of the operation as
8 it's taking place.

9 Q. Are the operations usually recorded?

10 A. They are often recorded, yes.

11 Q. And in addition to often being recorded,
12 is there a lot of times a live wire so that you
13 can -- I should say, control the situation?

14 A. A lot of times we will record it both for
15 evidentiary purposes, but also for safety to the
16 informant or to the officer, and be able to monitor
17 it live, so, yes.

18 Q. Now, why use an informant, as opposed to
19 just sending somebody down the street to go knock on
20 Christopher Garcia's door and say, "May I buy some
21 drugs?"

22 A. As great as that would be, it's
23 inappropriate, it's not practical. As can you
24 imagine, a person that sells drugs is going to take
25 certain precautions, and one of those precautions is

1 dealing with people that they're familiar with or
2 that have been vouched for by someone that they are
3 associated with.

4 So in the -- the type of methods that
5 Mr. Garcia used, it would not have been practical to
6 have just a stranger knock on the door and ask to
7 purchase narcotics.

8 Q. Now, based on that, was a plan developed
9 to use someone that Chris Garcia knew to purchase
10 drugs from -- to purchase drugs from him?

11 A. Yes, several individuals.

12 Q. And was -- and I'm going to start with the
13 first individual. Was the first individual someone
14 that was cooperating with law enforcement?

15 A. Correct.

16 Q. And was he an SNM Gang member?

17 A. He was.

18 Q. And did that person agree to go ahead and
19 purchase drugs from Chris Garcia?

20 A. Yes, he did.

21 Q. Was there an operation on August 7 of
22 2015, in Albuquerque, in Bernalillo County, in which
23 that person -- and what was that person's name?

24 A. That person's name was Sammy Griego.

25 Q. And did Sammy Griego, in fact, buy drugs

1 from Christopher Garcia?

2 A. Yes.

3 Q. And where did he -- was that operation
4 recorded, as you mentioned before?

5 A. I believe the operation was recorded, yes.

6 Q. And did he, in fact, buy drugs from
7 Christopher Garcia?

8 A. He did.

9 Q. What type of drugs did he buy from
10 Christopher Garcia?

11 A. On that date he purchased heroin and crack
12 cocaine.

13 Q. Do you know approximately how much heroin?

14 A. Approximately 50 grams of heroin.

15 Q. And how much crack cocaine?

16 A. I believe a little less than 25 grams.
17 Approximately 23 to 24 grams of crack cocaine.

18 Q. And did Sammy Griego know Chris Garcia
19 because of the SNM ties?

20 A. I believe so, yes.

21 Q. Now, was that -- was there an additional
22 time that Sammy Griego went to buy drugs from
23 Christopher Garcia?

24 A. Yes.

25 Q. And was that on August 11 of 2015?

1 A. Yes.

2 Q. And did the same thing happen, as far as
3 the controlled method that you referred to earlier?

4 A. Yes.

5 Q. And on that occasion, what did Sammy
6 Griego buy?

7 A. On that occasion, Mr. Griego purchased
8 heroin.

9 Q. And approximately how much heroin?

10 A. I believe it was approximately 75 grams of
11 heroin.

12 Q. Now, that amount of heroin -- first, let
13 me get back to the earlier amount of heroin. 49
14 grams of heroin, do you know how much he spent --
15 Sammy Griego -- to purchase that amount?

16 A. I believe it was approximately \$1700.

17 Q. All right.

18 A. I'd have to refer to the report.

19 Q. And what about for the 76 grams of heroin?

20 A. If I recall correctly, it was
21 approximately -- I believe \$2400.

22 Q. Now, those amounts of heroin, is that like
23 a one-time usage for a person, or is that more of a
24 significant amount of heroin?

25 A. That's definitely a more significant

1 amount of heroin, beyond personal use.

2 Q. So would that be an amount that somebody
3 would then go and distribute further?

4 A. Yes.

5 Q. Now, did the investigation into Chris
6 Garcia and his drug activities continue?

7 A. It did.

8 Q. And was there another operation in
9 September -- on September 10 of 2015 involving
10 Christopher Garcia selling drugs to somebody, or at
11 least being involved in the arrangement of selling
12 drugs to another person?

13 A. Yes.

14 Q. At that -- for that incident, was the same
15 person utilized, or was it a different person?

16 A. A different person was utilized.

17 Q. Who was utilized in that one?

18 A. A narcotics detective based out of Las
19 Cruces was utilized in an undercover capacity.

20 Q. And was that person, then, posing as
21 someone who wanted to purchase drugs, a drug dealer?

22 A. Yes.

23 Q. And how was it that that person was able
24 to purchase drugs from Christopher Garcia without
25 knowing him?

1 A. I believe another cooperating SNM member
2 made contact with Mr. Garcia and essentially vouched
3 for the undercover officer, so stated that --
4 that -- the cooperating gang member stated that this
5 officer was to the effect of not being law
6 enforcement, and someone that Mr. Garcia should be
7 able to safely sell to.

8 Q. And was that cooperator Eric Duran?

9 A. Yes.

10 Q. And so was the undercover officer on
11 September 10th of 2015, did he purchase heroin from
12 Christopher Garcia?

13 A. He did.

14 Q. And how much heroin was it that time?

15 A. Approximately 150 grams of heroin.

16 Q. So how much, approximately, did he pay for
17 that?

18 A. I don't recall exactly without referring
19 to the notes.

20 Q. All right. And the last one, you said was
21 approximately 24 -- was about half the amount, and
22 it was \$2,400; is that correct?

23 A. Correct.

24 Q. All right. So it would have been
25 substantially more than \$2,400; is that correct?

1 A. It would have been, yes. Based off of the
2 previous sales, Mr. Garcia was charging between \$800
3 to \$1,000 for an ounce of heroin.

4 Q. And how much is an ounce in grams?

5 A. So we typically would consider an ounce to
6 be approximately 28 and a half grams. However,
7 there is -- commonly in the drug world, typical to
8 consider an ounce to be 25 grams. So, essentially,
9 50 grams of heroin would be approximately 2 ounces.

10 Q. In the drug world?

11 A. Yes.

12 Q. Not by measurements of what you would
13 learn in school?

14 A. Correct.

15 Q. All right. Now, after September of 2015,
16 was there another individual who purchased drugs
17 from Christopher Garcia?

18 A. There was.

19 Q. And who was that individual?

20 A. That individual was Mario Montoya.

21 Q. Mario Montoya. Is he an SNM Gang member?

22 A. He is.

23 Q. Was he working with the federal
24 government?

25 A. Yes.

1 Q. And did he know Chris Garcia?

2 A. He did.

3 Q. And when he went into -- and what day did
4 he go and purchase drugs from Chris Garcia?

5 A. I believe it was November 18 of 2015.

6 Q. Now, did Mario Montoya -- did he have a
7 phone with him to contact Christopher Garcia that
8 was provided to him by the FBI?

9 A. I believe he did, yes.

10 Q. And also, was this another controlled
11 setting where he would go in and, again, do the
12 controlled purchase, be recorded, everything was
13 recorded?

14 A. Yes, it was.

15 Q. All right. And what did Mario Montoya buy
16 from Chris Garcia?

17 A. I believe Mr. Montoya purchased
18 approximately 50 grams of heroin from Mr. Garcia.

19 Q. And do you recall how much he paid for
20 that?

21 A. I think he paid approximately \$1900 for
22 it. Maybe 17 to \$1900.

23 Q. Now, and when I say they paid for it,
24 where do the funds come from?

25 A. The funds come from the US Government.

1 That's part of the controlled process, is we provide
2 the currency for that.

3 Q. All right. Do you search the persons
4 ahead of time to make sure that they don't have any
5 funds on them, provide them with funds, and then
6 after each of these incidents, search them again to
7 make sure that the money was actually exchanged?

8 A. We do.

9 Q. And for each of these incidents, were the
10 drugs actually then -- after the controlled buy, did
11 each of the individuals purchasing the drugs then
12 meet with the FBI, do the search after the incident,
13 and the drugs turned over to the FBI for analysis?

14 A. Yes. We take custody of the narcotics
15 once the operation is completed.

16 Q. And then do you then submit it for further
17 testing to the DEA to determine what, in fact, the
18 drugs were?

19 A. We do a preliminary field test of the
20 narcotics and submit it to the laboratory for
21 further analysis.

22 Q. And do you also weigh it upon receiving
23 the item?

24 A. We do.

25 Q. Now, after that -- what was the date,

1 November 15 -- 18 -- the November 18 incident, and
2 at this point in time, was Chris Garcia mainly being
3 targeted as part of the individuals who were SNM
4 members, who were involved in drug trafficking?

5 A. Initially, yes.

6 Q. Did something happen to cause him to
7 actually be looked at for one of the other ongoing
8 investigations?

9 A. Yes.

10 Q. And what was that?

11 A. We learned from the cooperating sources,
12 mainly Mr. Duran, that Mr. Baca was wanting to reach
13 out to Mr. Garcia to assist in his alleged plan.

14 Q. And what plan was that?

15 A. To attempt to assassinate Mr. Marcantel.

16 MR. LOWRY: Your Honor, objection.

17 THE COURT: Hold on.

18 MR. LOWRY: Objection, Your Honor, lack of
19 foundation.

20 THE COURT: Well, lay some foundation.

21 MR. LOWRY: May we approach?

22 THE COURT: You may.

23 (The following proceedings were held at
24 the bench.)

25 MR. LOWRY: Your Honor, I know there has

1 been conflicting testimony on this, but if you
2 recall from the pretrial hearings, Agent Acee
3 testified that he had to instruct Mario Montoya to
4 tell Chris Garcia what the gun was going to be used
5 for the day they picked it up.

6 Now, I don't think this agent has any
7 knowledge that my client had a plan to include
8 Mr. Garcia in the Marcantel murder. If you listen
9 to the conversations closely, he told all the
10 Government agents to keep Chris Garcia out of the
11 Marcantel thing, to keep him expressly ignorant.

12 THE COURT: Well, what are you objecting
13 to him --

14 MR. LOWRY: Talking about a plan to obtain
15 a gun, I don't have an objection. But Mr. Baca
16 didn't have a plan to include Chris Garcia in the
17 Marcantel --

18 THE COURT: Are you agreeing with that
19 line?

20 MS. ARMIJO: Well, I was asking the
21 questions, because they did an investigation where
22 eventually they get the gun from Chris Garcia.

23 THE COURT: Right.

24 MS. ARMIJO: But I think there is a great
25 deal of recordings, because you have two

1 cooperators, you have Mario Montoya and Eric Duran.
2 They're talking to each other, but they don't know
3 each other are working for the Government. So
4 neither of them know that they are working for the
5 Government. And so I think I disagree with
6 recording from Chris Garcia because, in reading
7 transcripts, I believe Chris Garcia knew ahead of
8 time that the gun was --

9 THE COURT: Here's my concern: A lot of
10 this is kind of coming in, they're not objecting to
11 it. But I think if they're going to object to it,
12 I've got to kind of clamp it down. So at least on
13 this point, you can go ahead and just lead him
14 through this, get what you want as far as the
15 Marcantel material; lead about Garcia on this one,
16 just lead him through it.

17 You can establish -- I don't think that
18 Mr. Lowry has any problem with this, and I don't
19 think he could -- that Duran and Garcia didn't know
20 that the other was working for the Government at the
21 time.

22 MS. ARMIJO: I think I can establish that.
23 I think I can also get in because they were -- they
24 also had a wiretap on Duran's phone, as well. So
25 they would know what Eric Duran -- who was with

1 Anthony Baca --

2 THE COURT: I think they did, too.

3 MS. ARMIJO: -- was with him. I can get
4 that. I will lead him, though.

5 THE COURT: That way this particular
6 issue, which he may not have any foundation for, can
7 lay it out with him.

8 MR. LOWRY: I mean, ultimately, it may get
9 there. But I don't know, to say that the
10 beginning -- she's asking about how the scope
11 broadened a bit. And I'm not quite sure -- that's
12 why I'm saying --

13 THE COURT: If you're going to get into
14 it, work on the foundation. If you don't need it
15 with this guy --

16 MS. ARMIJO: I'm bringing in the gun and
17 the whole operation.

18 THE COURT: With this guy?

19 MS. ARMIJO: Yes.

20 THE COURT: Then just lay a foundation.
21 We'll have to take it one at a time.

22 MR. LOWRY: And Mario Montoya, I have no
23 objection. But if she wants to relate that to Mr.
24 Baca, that's where I'm going to object.

25 THE COURT: Well, I guess I'll just have

1 to hear his testimony, and one question at a time.
2 So at least on that aspect. The rest of it I think
3 you can sail through. But on that aspect, I think
4 you're going to have to really slow down and lay a
5 foundation.

6 MS. ARMIJO: That's fine, Your Honor.

7 THE COURT: All right.

8 (The following proceedings were held in
9 open court.)

10 THE COURT: All right. Ms. Armijo?

11 BY MS. ARMIJO:

12 Q. Agent, I'm going to back up and ask a few
13 questions about the investigation and where it was
14 at this point in time. And we're now talking
15 November of 2015.

16 A. Yes, ma'am.

17 Q. Okay. And I believe you previously
18 indicated that up until at some point, Chris Garcia
19 was mainly a drug trafficking target; correct?

20 A. That's correct.

21 Q. And at some point in the investigation --
22 let me ask a different question: Mario Montoya, you
23 indicated that he was cooperating with the United
24 States; is that correct?

25 A. Yes.

1 Q. And as part of that cooperation, did he
2 have a phone that was issued to him by the FBI that
3 had a consensual wiretap on it, meaning that the FBI
4 was receiving any information just like a real wire
5 tap, about any calls and text messages that he would
6 receive on that?

7 A. Yes.

8 Q. And also, at the same time, did the FBI
9 have an investigation going where they were using
10 Eric Duran, who was an inmate with the Corrections
11 Department, who also had a telephone with him --
12 alleged contraband in the prison -- with a
13 consensual wiretap on that?

14 A. Yes.

15 Q. Did Eric Duran know Mario Montoya, as far
16 as -- because they were both SNM Gang members?

17 A. Yes.

18 Q. Did either of them, during the course of
19 this investigation through 2015, did either of them
20 know that they were each working independently with
21 the FBI?

22 A. Did they each know that the other one was?

23 Q. Yes.

24 A. Not that I'm aware of.

25 Q. Okay. And so -- and Eric Duran, now we're

1 going again to November of 2015, was he at -- in
2 corrections at PNM in the cell next to Anthony Baca?

3 A. Yes.

4 Q. And are you aware of, through the course
5 of this investigation, have you had an opportunity
6 and did you have an opportunity to review the
7 recordings, both either telephone -- let me ask
8 another question. Did Eric Duran, in addition to
9 having an alleged contraband telephone, did he also
10 have an FBI recording device with him to record
11 individuals while he was incarcerated during this
12 time period, November, December, 2015?

13 A. Yes.

14 Q. And as part of investigative team, did you
15 have an opportunity to listen to those recordings on
16 an ongoing basis and then also, afterward, in
17 reviewing and assisting in this investigation?

18 A. I've reviewed and listened to most of the
19 recordings, yes.

20 THE COURT: Ms. Armijo, would this be a
21 good time for us to take our break?

22 MS. ARMIJO: Sure, Your Honor.

23 THE COURT: We'll take a 15-minute break
24 and then we'll come back and work another 45
25 minutes, and then call it a week.

1 All right. We'll be in recess for about
2 15 minutes.

3 (The jury left the courtroom.)

4 THE COURT: All right. We'll be in recess
5 for about 15 minutes.

6 (A recess was taken.)

7 THE COURT: All right. We'll go on the
8 record. Anything we need to discuss before we bring
9 the jury in, Ms. Armijo?

10 MS. ARMIJO: No, Your Honor.

11 THE COURT: How about from the defendants?

12 MS. BHALLA: I just have a question, Your
13 Honor. Are the marshals going to communicate at all
14 with the juror that had concerns that they didn't
15 think that anything untoward had happened?

16 THE COURT: My understanding is they
17 already did. They already told her that they
18 weren't going to go out and visit the man. They
19 investigated the man. The man has got a little bit
20 of criminal history. But it's more like DWIs.

21 MS. BHALLA: So they let her -- I just
22 want to make sure any, like, fears that she --

23 THE COURT: I'll double-check. But I
24 think what I'm relaying to you is what was relayed
25 to her, is that the fellow had a Facebook. It

1 appears to be random. She actually thought it was,
2 too. She wasn't concerned about it, but she thought
3 she better report it --

4 MS. BHALLA: Okay.

5 THE COURT: -- given the Zia symbol on the
6 jacket, the hoodie. And the fellow had on his --
7 like Facebook, he had like deputy sheriffs and stuff
8 like that. So there is no indication --

9 MS. BHALLA: Okay.

10 THE COURT: -- that he has any sort of
11 gang affiliation --

12 MS. BHALLA: Okay.

13 THE COURT: -- or violent criminal history
14 or anything like that.

15 So I'll double-check, but the impression I
16 had was what I just relayed to you is what was
17 relayed to her --

18 MS. BHALLA: Okay.

19 THE COURT: -- and it's closed, they're
20 not going to do anything further with it, they're
21 not going to go visit the guy.

22 Ms. Standridge, do you want to shut that
23 door just a second? Was what you told me that the
24 marshals told you about the investigation for
25 Ms. Becker -- was that relayed to her so she's now

1 been told that?

2 THE CLERK: I have not informed her. The
3 marshals informed her when they were speaking with
4 her earlier, yes.

5 THE COURT: Okay.

6 MS. BHALLA: Thank you, Your Honor.

7 THE COURT: All right.

8 All rise.

9 (The jury entered the courtroom.)

10 THE COURT: All right. Everyone be
11 seated.

12 Mr. Neale, I'll remind you that you're
13 still under oath.

14 THE WITNESS: Yes, sir.

15 THE COURT: Ms. Armijo, if you wish to
16 continue your direct examination of Mr. Neale, you
17 may do so at this time.

18 MS. ARMIJO: Thank you.

19 THE COURT: Ms. Armijo?

20 BY MS. ARMIJO:

21 Q. Agent Neale, did you -- I believe we were
22 talking about Chris Garcia and the investigation
23 and -- when you left off.

24 Now, as part of the investigation, you
25 mentioned that you were investigating the conspiracy

1 to kill Dwayne Santistevan and Gregg Marcantel; is
2 that correct?

3 A. That's correct.

4 Q. And if you can recall, in November of
5 2015, was one of the targets of that investigation
6 Anthony Baca?

7 A. Yes.

8 Q. Now, were there -- did you -- and we'd
9 already talked about Mr. Baca. I believe you
10 indicated was next to Eric Duran?

11 A. Correct.

12 Q. Now, at some point in the investigation,
13 did law enforcement learn that there was the
14 potential of an actual firearm being given to Mario
15 Montoya for that murder conspiracy?

16 A. Yes.

17 Q. And what led up to that?

18 A. Mr. Duran relayed to --

19 MR. LOWRY: Objection, Your Honor. He's
20 going to talk about --

21 THE COURT: Why don't you lead him through
22 this?

23 BY MS. ARMIJO:

24 Q. Let me ask a different question. You have
25 indicated that you were actively reviewing, and

1 that you have reviewed, all of the recordings in
2 this case in reference to Eric Duran and recordings
3 that he had with Anthony Baca; is that correct?

4 A. All of the body recordings, yes.

5 Q. Okay. And when you say "body recordings,"
6 did Eric Duran have both a recording device with
7 him, as well as the telephone that had the wiretap
8 on it?

9 A. Yes.

10 Q. And would there be recordings from the
11 wiretapped phone, and also the recording device that
12 he had?

13 A. Yes.

14 Q. And have you had an opportunity to, as
15 part of this investigation, review all of that?

16 A. I reviewed all of the audio captured on
17 the body recorder. As far as the telephone, I
18 believe it was -- I have reviewed most of it, yes.

19 Q. And as a result of that, are you aware of
20 whether or not there was -- and was there a plan,
21 then, for -- based upon conversations that Mario
22 Montoya had with Eric Duran and Anthony Baca, was
23 there eventually an undercover operation set up in
24 which a firearm was passed from Christopher Garcia
25 to Mario Montoya?

1 A. Yes.

2 Q. And was that -- and prior to that
3 undercover operation, were there conversations
4 between Mario Montoya and Anthony Baca and Chris
5 Garcia -- sorry, Mario Montoya, Anthony Baca, Eric
6 Duran, and also Chris Garcia?

7 A. There were conversations between Mr.
8 Montoya and Mr. Duran and Mr. Baca, and there were
9 also conversations between Mr. Montoya and
10 Mr. Garcia.

11 Q. Correct. You said it much better than I
12 did. I'm sorry, the medicine is taking effect.

13 All right. So now, what day was this
14 operation set for in reference to the firearm?

15 A. It occurred on November 29 of 2015.

16 Q. And what was the plan?

17 A. The night before, which would have been
18 the 28th, Mr. Garcia indicated to Mr. Montoya that
19 he had a firearm that was ready for Mr. Montoya to
20 come pick up. Mr. Montoya, I believe, advised that
21 it was too late, he was already in bed, and would
22 retrieve it the following day.

23 Q. Was that part of the plan because the FBI
24 wasn't ready to just pick up and go get it?

25 A. It was to allow us to have personnel to

1 control the operation, to delay it until the
2 following day.

3 Q. And was the operation delayed until the
4 following day?

5 A. It was.

6 Q. Now, the 29th -- was that a Sunday, was it
7 over the weekend, do you recall?

8 A. It was over the weekend. I believe it was
9 a Saturday or Sunday.

10 Q. And were there already plans in place to
11 go ahead and indict the cases on December 1, which
12 would have been just a few days later?

13 A. Yes.

14 Q. And was there already an operation in
15 place to do the initial takedown on December 3,
16 which would have been later on the next week?

17 A. Yes.

18 Q. So then over the weekend, you said the FBI
19 had a chance to get ready. What happened during
20 that undercover -- or I should say, that controlled
21 situation?

22 A. As I previously mentioned about controlled
23 operations, we had law enforcement personnel that
24 were on hand to monitor Mr. Montoya's movements to
25 Mr. Garcia's house. And Mr. Montoya did travel

1 there, spoke briefly with Mr. Garcia. Mr. Garcia
2 provided a handgun to Mr. Montoya, which he then
3 took from the residence, and met with us, and turned
4 over to us so we could take custody of it.

5 Q. Was that operation -- did Mr. Montoya have
6 a recording on his person during that operation?

7 A. He did.

8 Q. Was the FBI listening to the operation as
9 it was occurring?

10 A. Yes.

11 Q. Did the FBI also maintain that recording
12 for evidentiary purposes?

13 A. Yes.

14 Q. Now, the firearm that he retrieved from
15 Christopher Garcia, was it then turned over to the
16 FBI for evidentiary purposes?

17 A. Yes, we took custody of it.

18 Q. And after taking custody of it, was it
19 sent for testing to FBI labs?

20 A. It was.

21 Q. What sort of testing was it submitted for?

22 A. It was submitted for function testing to
23 verify the specifics of the firearm: The make,
24 model, caliber; also to check into the national
25 database to see if bullets -- to see if the firearm

1 had been used in other crimes that had already been
2 recorded.

3 And additionally, forensic testing was
4 done on the firearm and the holster that it came
5 with to check for, I believe, just DNA.

6 Q. Now, and then after all that testing was
7 done, was it then returned back to your office in
8 Albuquerque?

9 A. Yes.

10 Q. And have you brought it to court today for
11 court purposes?

12 A. Yes.

13 Q. And is it in the box next to you as
14 Exhibit Number 278?

15 A. Yes.

16 MS. ARMIJO: Your Honor, the United States
17 would move for the admission of Exhibit 278.

18 THE COURT: Any objection?

19 MR. LOWRY: No objection.

20 MR. VILLA: No, Your Honor.

21 THE COURT: Not hearing any objection,
22 Government's Exhibit 278 will be admitted into
23 evidence.

24 (Government Exhibit 278 admitted.)

25 MS. ARMIJO: May I approach the witness,

1 Your Honor?

2 THE COURT: You may.

3 BY MS. ARMIJO:

4 Q. Agent Neale, can you go ahead and open up
5 that item?

6 A. Yes.

7 Q. All right. What is it that you have in
8 your hand?

9 A. This is a Phoenix Arms .22 long rifle,
10 semi-automatic pistol.

11 Q. And is it -- has it been rendered safe for
12 court purposes?

13 A. It has.

14 Q. And is that the firearm that Mario Montoya
15 received from Chris Garcia?

16 A. It is.

17 Q. And can you describe -- you indicated --
18 what type of firearm is it?

19 A. It is a Phoenix Arms.

20 Q. Is that the brand?

21 A. That is the brand.

22 Q. Do you know what caliber it is?

23 A. I do. It's a model HP .22, and it's a .22
24 caliber long rifle.

25 Q. Now -- long rifle, did you say?

1 A. A .22 long rifle caliber, yes.

2 Q. Okay. Which is different from having a
3 long rifle --

4 A. Yes.

5 Q. -- firearm?

6 A. Yes.

7 Q. Now, did that firearm come as it is there?
8 In other words, are there any parts missing from it?

9 A. The holster is missing from it.

10 MS. ARMIJO: I'm going to move, without
11 objection, 280 to 282, which deal with the firearm,
12 Your Honor.

13 THE COURT: Any objection?

14 MR. LOWRY: No, Your Honor.

15 THE COURT: Those are three exhibits,
16 right?

17 MS. ARMIJO: Yes, Your Honor.

18 THE COURT: So Government's Exhibits 280,
19 281, and 282 will be admitted into evidence.

20 MS. ARMIJO: I'm sorry, Your Honor. It's
21 279, 280, and 282.

22 THE COURT: Are those still without
23 objection?

24 Not hearing any objection, 279, 280, and
25 282 will be admitted into evidence.

1 (Government Exhibits 279, 280, and 282
2 admitted.)

3 BY MS. ARMIJO:

4 Q. All right. And we're going to show first
5 Exhibit 279. And Agent, what is it that we're
6 looking at?

7 A. This appears to be the same firearm that
8 I'm holding.

9 Q. All right. And I'm showing Exhibit Number
10 280. Does that appear to be the same firearm?

11 A. Yes, it does.

12 Q. All right, and lastly, showing 282. Is
13 that the same firearm?

14 A. Yes, it is.

15 Q. All right. And is this actually the
16 firearm's worksheet when it went to the FBI to
17 determine whether or not it was a functioning
18 firearm?

19 A. That is what it appears to be.

20 Q. All right. And do you know if whether --
21 and it says, "Test conducted." It says, "Function
22 tested normally when using magazine from RFC." Do
23 you know if that firearm works?

24 A. Based off of the analysis from the lab, it
25 appears to be functionable.

1 Q. And do you know whether or not, in
2 addition to the lab, whether or not -- and he can
3 testify to it, but I'm just asking you, do you know
4 whether or not Special Agent Acee actually
5 fire-tested that weapon, as well?

6 A. I'm aware that he did.

7 Q. Now, was this firearm also sent for DNA
8 analysis?

9 A. It was.

10 Q. And do you know -- and you indicated that
11 there was holster with it, as well?

12 A. There was.

13 Q. Was the holster sent for DNA analysis?

14 A. Yes.

15 Q. And do you know whether or not there was
16 any sort of match in terms of DNA with Christopher
17 Garcia and either the holster or the firearm?

18 A. I believe a determination was made from
19 the analysis of the DNA on the holster of the
20 firearm.

21 Q. As to Christopher Garcia?

22 A. Yes.

23 Q. Now, after the November 29 operation, in
24 which the firearm was received, was there a search
25 warrant obtained for Chris Garcia's house to be

1 served in the early morning hours on December 3 of
2 2015?

3 A. Yes.

4 Q. And on that day, was that also the same
5 day as the roundup from all the indictments in this
6 case?

7 A. It was.

8 MS. ARMIJO: And, Your Honor, at this
9 time, I'm going to move for the admission, without
10 objection, of 450 through 458.

11 THE COURT: Any objection?

12 Not hearing any, Government's Exhibits 450
13 through 458 will be admitted into evidence.

14 MS. ARMIJO: If we can please display
15 Government's Exhibit 450.

16 (Government Exhibits 450 through 458
17 admitted.)

18 BY MS. ARMIJO:

19 Q. All right. Agent, are you familiar with
20 the scene in this photograph?

21 A. I am.

22 Q. And whose residence is that?

23 A. This is Mr. Garcia's residence.

24 Q. And was that in Albuquerque, New Mexico?

25 A. It was.

1 Q. Now, you say this is his residence. Is
2 this where he actually lived?

3 A. Yes.

4 Q. And was he actually arrested there that
5 morning?

6 A. He was.

7 Q. Was there also a search warrant in
8 relationship to him to a different location?

9 A. There was.

10 Q. And what location would that have been?

11 A. The address?

12 Q. No. Like, why would you have two
13 different places associated with him for a search
14 warrant?

15 A. I believe the secondary location was --
16 belonged to his parents, or had some sort of
17 association with his parents.

18 Q. And why, in particular, did the FBI get a
19 search warrant for that location?

20 A. During, I believe all, if not most, of the
21 controlled purchases of narcotics that we conducted
22 on Mr. Garcia, Mr. Garcia instructed the purchaser
23 to follow him to his parents' house, and went to the
24 secondary location, and made comments that indicated
25 that it was where he concealed his narcotics. So

1 the belief was that he was essentially using that
2 secondary location as his stash house for his supply
3 of narcotics.

4 Q. And what is a stash house?

5 A. A stash house is pretty much as it sounds.
6 It's a location that a drug dealer can conceal
7 narcotics, that's somewhat separate from their
8 normal living.

9 Q. And how far was that location from the
10 residence that we're seeing on Exhibit Number 450,
11 approximately?

12 A. Approximately two miles.

13 Q. And then -- I'm going to skip real quickly
14 to Exhibit Number 456. Are you familiar with that
15 location?

16 A. Yes.

17 Q. And what is it that we're looking at?

18 A. This appears to be a picture of the
19 secondary location I just mentioned.

20 Q. All right. Now, in going to Chris
21 Garcia's residence, was it searched for the presence
22 of any drugs?

23 A. It was.

24 Q. Now, was there -- does it take him a while
25 to come up -- what time was the search warrant

1 initially executed?

2 A. I believe the execution time was
3 approximately 4:00 in the morning.

4 Q. And so was there a reason it was done so
5 early?

6 A. It was. Authority had been granted a
7 search warrant to conduct the execution basically
8 during nighttime hours.

9 Q. And what was the purpose of that?

10 A. That's primarily for safety of the
11 officers involved in the execution of the search
12 warrant. The case agents determined that there was
13 a heightened sense of danger with Mr. Garcia, and
14 thus the judge allowed the execution to happen
15 outside of the normal hours, so to speak.

16 Q. All right. So was the plan and hope to
17 find him asleep to lessen the danger?

18 A. That is definitely a goal of conducting it
19 early in the morning.

20 Q. And when they went and hit his house, was
21 it a simple little knock on the door, "Hello, we're
22 police?" Or what methods were used?

23 A. I believe the methods used would be as was
24 used in the execution of most search warrants, and
25 that's conducting the announcement, and then

1 knocking on the door and giving a reasonable amount
2 of time, and then when no response is given from the
3 occupants, using mechanical methods to breach the
4 door. So using a battering ram or some other tool
5 to gain entry to the structure.

6 Q. And when you say "Announcements," are you
7 using a loud speaker, for instance, saying "FBI" or
8 "Police?"

9 A. I don't know specifically if a loud
10 speaker was used on that residence. Sometimes they
11 are. But it's often just the presence and the
12 announcing at the door of law enforcement.

13 Q. And is it fair to say that there was a
14 fair presence at Mr. Garcia's house to conduct the
15 search warrant?

16 A. Yes. There was an FBI SWAT team that was
17 used to execute the search warrant.

18 Q. And did he come out right away, or did it
19 take him some time to come out?

20 A. My understanding is it took some time, and
21 there was some back and forth communication between
22 officers outside of the residence and Mr. Garcia,
23 who was inside the residence.

24 MR. LOWRY: Your Honor, it's not clear to
25 me that this witness is testifying of firsthand

1 knowledge.

2 THE COURT: It doesn't sound like he is,
3 so if he's just relayed things that were told to
4 him, let's not have him do that.

5 BY MS. ARMIJO:

6 Q. All right. I'm going to go to Exhibit
7 Number 451. Is this a picture of a toilet found in
8 Christopher Garcia's residence?

9 A. Yes.

10 Q. And was there actual marijuana -- what
11 does that appear to be, the green, leafy substance?

12 A. The green, leafy substance appears to be
13 marijuana.

14 Q. And did it -- did there appear to be that
15 marijuana was inside of the toilet?

16 A. Yes.

17 Q. Showing you Exhibit Number 453. And is
18 this a photograph from inside of the house?

19 A. It is.

20 Q. And are you aware of what the item is in
21 Number 3?

22 A. I believe it's a digital scale.

23 Q. And looking at Exhibit Number 454. Can
24 you tell what the item there next to Number 4 is?

25 Does it appears to be telephones -- no, can we blow

1 that up? I don't know if we can.

2 A. It also appears to be a digital scale.

3 Q. All right. What are scales used for in
4 the drug trade?

5 A. To measure out the weights of the
6 narcotics.

7 Q. Exhibit Number 455. What is that a
8 picture of?

9 A. That's a picture of the exterior of
10 Mr. Garcia's residence, as well as his vehicle.

11 Q. What kind of vehicle did he have?

12 A. It's, I believe, a 2008 Lincoln Navigator.

13 Q. Now, the search on the stash house, were
14 there any drugs recovered there?

15 A. There were.

16 Q. I'm going to show Exhibit Number 457.
17 What is it that we're looking at?

18 A. That is an item that was recovered from
19 the backyard of the secondary location that was
20 subsequently determined to be heroin.

21 Q. And what was the weight of the heroin?

22 A. I believe the weight was approximately 200
23 grams of heroin.

24 Q. Was that submitted for analysis to the
25 FBI?

1 A. It was.

2 Q. And -- I should say, was the heroin
3 submitted for analysis to DEA?

4 A. It was, yes.

5 Q. How about the packaging material, did that
6 have analysis done by the FBI?

7 A. Yes, analysis was performed.

8 Q. What type of analysis?

9 A. Forensic analysis. I believe,
10 fingerprint. I don't know if further analysis was
11 requested.

12 Q. All right. So you mentioned earlier that
13 DNA was done on the firearm; correct?

14 A. Correct.

15 Q. So that for the drugs, was it submitted
16 for fingerprint analysis that you know of?

17 A. Yes.

18 Q. And was anybody's fingerprint matched?

19 A. From my understanding, the fingerprint of
20 Mr. Garcia was found on the packaging material of
21 that item.

22 Q. And lastly, I'm showing Exhibit Number
23 458. Who is it that we're looking at?

24 A. That's a picture of Mr. Garcia.

25 Q. And was that photograph found during the

1 search warrant?

2 A. The photograph was found on a cell phone
3 seized during the search warrant, and subsequently a
4 search warrant was written for the cell phone, and
5 this image was taken from it.

6 Q. Does that appear to be a photograph taken
7 within his house?

8 A. To the best of my ability, it does.
9 However, it's -- the plant in there is similar to a
10 plant that was recovered from the address.

11 Q. Okay. And what type of plant was it?

12 A. The plant was determined to be a marijuana
13 plant.

14 MS. ARMIJO: If I may have a moment, Your
15 Honor?

16 THE COURT: You may.

17 MS. ARMIJO: I pass the witness, Your
18 Honor.

19 THE COURT: Thank you, Ms. Armijo.
20 Mr. Lowry, are you going to lead?

21 MR. LOWRY: Yes, Your Honor.

22 THE COURT: Mr. Lowry?

23 CROSS-EXAMINATION

24 BY MR. LOWRY:

25 Q. Good afternoon, Mr. Neale.

1 A. Good afternoon.

2 Q. How are you?

3 A. Good. How are you?

4 Q. I believe you looked -- you examined the
5 firearm that was collected, the Phoenix Arms weapon?

6 A. Just now or previously?

7 Q. Well, before -- prior to coming to court.

8 A. I was involved in the recovery of the
9 firearm, yes.

10 Q. Was it a complete weapon?

11 A. I'm not sure what you mean.

12 Q. Did it have a clip?

13 A. There was no magazine in the firearm, no.

14 Q. Magazine. So when that gun was given to
15 Mario Montoya, it did not have a magazine?

16 A. That's correct.

17 Q. And you said it was operational, but it
18 was operational to the extent you placed a single
19 cartridge in it at a time?

20 A. Yes. That was how a semi-automatic
21 firearm would function in that case, yes.

22 Q. That was how it would function without a
23 magazine?

24 A. Correct.

25 Q. And I just want to make sure I understood

1 your testimony correctly. You didn't think at any
2 point in time that Mr. Montoya and Mr. Duran
3 understood they were working for the Government?

4 A. I was never -- I'm sorry, can you repeat
5 that question?

6 Q. Sure. I believe you testified to this
7 jury that Mr. Duran didn't understand that Mr.
8 Montoya was working for the Government, and Mr.
9 Montoya didn't understand that Mr. Duran was working
10 for the Government.

11 A. I believe that -- at that point in the
12 investigation, that neither was aware that the other
13 one was a cooperating individual.

14 Q. And that was November 29, 2015?

15 A. Basically, I don't know the point -- I
16 don't know at what point each individual became
17 aware of the other individual's status as a
18 cooperator.

19 Q. Okay. So you don't know?

20 A. I don't know.

21 Q. And I believe you testified that you
22 hadn't reviewed all of the calls?

23 A. That's correct.

24 Q. And it didn't sound like you testified
25 that you reviewed any of the texts?

1 A. I don't recall reviewing any of the text
2 messages, sent from Mr. --

3 Q. From either one: From Montoya to Duran;
4 Duran to Montoya; Montoya to Mr. Acee? Any texts?

5 A. Not that I recall, no.

6 Q. Do you recall reviewing any photographs
7 from those phones?

8 A. Yes.

9 Q. From the cooperating phones?

10 A. No.

11 Q. Okay. What other types of information was
12 transmitted across those phones, if any?

13 A. I don't know specifically. I'm aware that
14 phone calls were made, text messages. I believe
15 pictures, and I believe access to the internet was
16 also done on the phones.

17 Q. Okay. Do you think there was gambling
18 done on the phones?

19 A. I don't know the specifics. I haven't
20 reviewed the forensic dumps from the phones.

21 Q. And do you think there was pornography
22 sent to the Department of Corrections on the phone
23 that Mr. Duran had?

24 MS. ARMIJO: Objection, foundation.

25 MR. LOWRY: Well, he said he's reviewed

1 the evidence.

2 THE COURT: Well, I think you need to lay
3 a foundation.

4 BY MR. LOWRY:

5 Q. Did you -- you said you reviewed the
6 materials in this case?

7 A. I've reviewed some of the materials in the
8 case related to the phone calls.

9 Q. Okay. But did you review everything that
10 was associated with the phones?

11 A. No, because it comes across different
12 systems.

13 MR. LOWRY: May I have a moment, Your
14 Honor?

15 THE COURT: You may.

16 MR. LOWRY: No further questions, Your
17 Honor.

18 THE COURT: Thank you, Mr. Lowry. Anyone
19 else have cross-examination of Mr. Neale?

20 Mr. Villa?

21 MR. VILLA: Thank you, Your Honor.

22 THE COURT: Mr. Villa?

23 CROSS-EXAMINATION

24 BY MR. VILLA:

25 Q. Good afternoon, Agent Neale.

1 A. Good afternoon, sir.

2 Q. So at the beginning of your testimony with
3 Ms. Armijo, you said that you participated in the
4 investigation of the SNM, including other homicides,
5 and things like that?

6 A. I participated in the investigation, yes.

7 Q. So was one of the individuals you were
8 investigating Billy Cordova?

9 A. Not initially, but later in the
10 investigation, yes.

11 Q. So there was a point in time you were
12 investigating Billy Cordova?

13 A. Yes.

14 Q. And isn't it true that you were tasked by
15 Agent Acee with preparing what we call overt acts on
16 Billy Cordova?

17 A. That's correct.

18 Q. And overt acts are discrete things that an
19 individual defendant has done in furtherance of a
20 conspiracy?

21 A. You can characterize it as discrete.

22 Q. Well, maybe discrete is the wrong word.
23 But overt act, it's an act that the defendant has
24 done in furtherance of a conspiracy?

25 A. That's correct.

1 Q. And so you were tasked with drafting those
2 up to charge Billy Cordova with racketeering;
3 correct?

4 A. Yes.

5 Q. Isn't it true that you were present with
6 Agent Acee when he interviewed Billy Cordova in
7 January of 2016?

8 A. Several interviews were conducted of Mr.
9 Cordova. I was present for some of them, not all of
10 them.

11 Q. Were you present during an interview with
12 Agent Acee at the Metropolitan Detention Center in
13 Bernalillo County?

14 A. No.

15 Q. Were you present at an interview of Billy
16 Cordova with Agent Acee at an interview at the FBI
17 field office in Albuquerque?

18 A. Yes.

19 Q. And during the time that you were there,
20 did Agent Acee tell you not to finish writing up
21 those overt acts on Billy Cordova, because Mr.
22 Cordova was going to cooperate?

23 MS. ARMIJO: Objection, hearsay.

24 THE COURT: Well, if it's being offered
25 for the truth, sustained.

1 MR. VILLA: Well, I think it's offered to
2 show the state of mind of Billy Cordova, Your Honor.

3 THE COURT: Well, I'm going to sustain it.

4 BY MR. VILLA:

5 Q. Let me ask you this: At some point, did
6 you stop drafting overt acts on Billy Cordova?

7 A. Yes.

8 Q. And after you stopped, did he become a
9 cooperator with the FBI?

10 A. I believe, yes. I don't know if it was
11 before or after, but he did stop -- he did become a
12 cooperator, and I did stop compiling.

13 Q. And, as a matter of fact, you opened him
14 for the FBI as a cooperating witness?

15 A. Yes, correct.

16 Q. And you never finished drafting the overt
17 acts against Mr. Cordova?

18 A. No.

19 Q. And Mr. Cordova, to your knowledge, was
20 never charged with any racketeering?

21 A. He was not.

22 Q. Or charged federally, at all, in
23 connection with this SNM investigation?

24 A. Correct.

25 Q. The overt acts that you were investigating

1 or drafting up against Mr. Cordova, did that include
2 murders?

3 A. I began looking at a murder for
4 determination if it could be used as an overt act.

5 Q. Against Mr. Cordova?

6 A. Correct.

7 Q. That was the murder of who?

8 A. Samuel Chavez.

9 Q. So you were investigating whether Mr.
10 Cordova could be charged with, or accused of
11 participating or taking part in the murder of Sammy
12 Chavez?

13 A. I began compiling documents from that case
14 for that purpose, yes.

15 Q. Any other homicides that you were looking
16 at in connection with Mr. Cordova?

17 A. Not that I recall.

18 Q. And again, Mr. Cordova has never been
19 charged with that murder of Mr. Chavez?

20 A. He has not.

21 Q. Were some of the allegations you were
22 looking into connected with things that Mr. Cordova
23 was bragging about?

24 MS. ARMIJO: Objection, calls for hearsay.

25 MR. VILLA: Well, not the content, but

1 just whether he was bragging?

2 THE COURT: If you can answer yes or no,
3 but if he's going to go further than that.

4 BY MR. VILLA:

5 Q. Just a yes-or-no question.

6 A. I don't know.

7 Q. You don't know because you don't remember?

8 A. Yeah, I don't remember.

9 Q. All right. Now, were you involved with
10 Mr. Cordova's recording of the defendants in this
11 case?

12 A. Yes, I was.

13 Q. So that includes Mr. Perez?

14 A. Yes.

15 Q. And you agree with me that that occurred
16 approximately February of 2016?

17 A. Correct, yes.

18 Q. And that's probably just about a month
19 after you opened him for the FBI; correct?

20 A. Probably approximately a month, yes.

21 Q. And after those recordings took place,
22 only then was Mr. Perez charged in this case?

23 A. The recordings were used in the
24 determination to charge him, yes.

25 Q. And at no point after that time was Mr.

1 Cordova ever charged with anything?

2 A. As I've previously testified, he hasn't
3 been charged federally.

4 Q. Now, ultimately, Mr. Cordova was closed by
5 the FBI as an informant; correct?

6 A. I believe so, yes.

7 Q. You didn't do that yourself?

8 A. No.

9 Q. Did you investigate the reasons why he was
10 closed?

11 A. I was not involved in that investigation.

12 Q. Can you tell me why an informant would get
13 closed by the FBI?

14 A. Usually for -- there are different
15 reasons. One reason is for violating essentially
16 the terms of cooperation. Other reasons could
17 include inactivity or the source no longer wishing
18 to be a source.

19 Q. And you don't know the reason why Mr.
20 Cordova was closed?

21 MS. ARMIJO: Objection, foundation.

22 BY MR. VILLA:

23 Q. You don't have personal knowledge about
24 why Mr. Cordova was closed?

25 A. No, I was not involved in the

1 investigation of those reasons.

2 Q. Okay. Did you attend a party that
3 involved multiple individuals who were working with
4 the government, defendants in this case?

5 A. Can you be more specific?

6 Q. So it was a party, I think, that took
7 place at one of the prisons where pizza was
8 provided, Agent Acee was there, and many of the
9 cooperating defendants or witnesses were there.

10 A. There was an occasion like that, yes.

11 Q. When was that?

12 A. I don't know.

13 Q. Did you attend it?

14 A. Yes.

15 Q. Can you tell me where it was?

16 A. It was in the -- I believe the family
17 visitation room of -- I believe the Level 6 facility
18 at the Penitentiary.

19 Q. In Santa Fe?

20 A. Yes.

21 Q. So that would be in PNM North?

22 A. Correct.

23 Q. And you said it was in the family room.

24 How many individuals were there when you were there?

25 A. Approximately five to eight cooperators --

1 the cooperating inmates, along with some of their
2 family members. There were several agents from the
3 FBI and several individuals from the New Mexico
4 Department of Corrections administration.

5 Q. Who was there from the FBI besides
6 yourself?

7 A. I know Agent Acee was there. I don't
8 recall specifically which other agents were there.

9 Q. And you said there were individuals from
10 the New Mexico Corrections Department?

11 A. Correct.

12 Q. Who was there from the New Mexico
13 Corrections Department?

14 A. I don't recall specifically.

15 Q. Anyone else that you can recall
16 specifically?

17 A. No.

18 Q. How about with the United States
19 Attorney's Office?

20 A. Not that I recall.

21 Q. And while you were there, what was going
22 on? Pizza was being served?

23 A. There was pizza, and the cooperating
24 inmates were allowed some time to spend with their
25 families.

1 Q. And that's something that normally doesn't
2 happen, right?

3 A. Normally doesn't happen for inmates?

4 Q. That's right.

5 A. I don't know.

6 Q. You're not aware of that?

7 A. No.

8 Q. Have you ever attended a party like that
9 before?

10 A. I've never attended a party at the prison
11 before, no.

12 Q. Did you participate in any investigation
13 into these same cooperators having sex in the family
14 room?

15 A. I did not participate in that
16 investigation.

17 Q. Okay. So you don't know if the family
18 room that you speak of where the party occurred is
19 the same location where these inmates were allowed
20 to have sex?

21 A. I don't know.

22 MR. VILLA: May I have just a moment, Your
23 Honor?

24 THE COURT: You may.

25 MR. VILLA: No further questions, Your

1 Honor.

2 THE COURT: Thank you, Mr. Villa.

3 Anyone else have cross-examination?

4 MS. JACKS: No.

5 THE COURT: All right.

6 Ms. Armijo, if you wish to redirect?

7 REDIRECT EXAMINATION

8 BY MS. ARMIJO:

9 Q. Agent Neale, did that firearm still
10 function even without a magazine?

11 A. It did.

12 Q. And can you put another -- I guess .22
13 caliber magazine in it, and it would function even
14 as a semi-automatic?

15 A. Yes.

16 Q. And are you aware what a Kastigar letter
17 is?

18 A. Yes.

19 Q. What's a Kastigar letter?

20 A. It is a agreement between the United
21 States Attorney's Office and an individual who is
22 potentially facing federal criminal charges that
23 allows the individual to make statements and not
24 have them directly be used against them. So
25 essentially giving them, I guess, a limited immunity

1 from statements that they make during the scope of
2 that letter.

3 Q. Are you aware of whether or not when Billy
4 Cordova was finally officially interviewed by the
5 FBI, if he did so with an attorney under a Kastigar
6 letter?

7 A. I believe he did so.

8 MR. VILLA: Objection, lack of foundation.
9 He said he believed.

10 THE COURT: Well, let's firm that up. See
11 if he knows.

12 BY MS. ARMIJO:

13 Q. Do you know if he did so? Did he have --
14 let me ask this: Did he have an attorney present?

15 A. He did.

16 Q. And are you aware of when an attorney is
17 present for interview such as a debrief, that
18 they're always done with Kastigar letters?

19 A. Yes.

20 Q. And is that your understanding of the
21 meeting, the initial meeting with Billy Cordova and
22 members of law enforcement and the U.S. Attorney's
23 Office and his attorney?

24 MR. VILLA: Objection, calls for hearsay.

25 THE COURT: Well, no. Overruled.

1 A. Interviews were conducted with the
2 attorney present under the scope of the Kastigar
3 letter.

4 BY MS. ARMIJO:

5 Q. And you mentioned that you were looking at
6 different investigations. Were those old, cold
7 cases, the one that you mentioned about Sammy
8 Chavez, I believe?

9 A. It was.

10 Q. Okay. And was that investigation ever
11 finished by anybody?

12 A. Not that I'm aware of.

13 Q. And I don't know if you're aware of this,
14 are Level 4 inmates from the prison, are they
15 allowed contact visit?

16 A. I don't know.

17 MS. ARMIJO: No further questions.

18 THE COURT: Thank you, Ms. Armijo.

19 Do you have something, Mr. Lowry?

20 MR. LOWRY: Just very quickly, Your Honor.

21 I know the hour is late.

22 RE CROSS-EXAMINATION

23 BY MR. LOWRY:

24 Q. Mr. Neale, you said this gun still
25 functioned as a semi-automatic. But in the state

1 you had it in, if you were trying to use that
2 weapon, you could only use one shot; correct?

3 A. Correct.

4 MR. LOWRY: No further questions.

5 THE COURT: Thank you, Mr. Lowry.

6 Anything else, Ms. Armijo?

7 MS. ARMIJO: No, Your Honor.

8 THE COURT: All right.

9 Mr. Neale, you may step down. Is there
10 any reason that Mr. Neale cannot be excused from the
11 proceedings? Ms. Armijo?

12 MS. ARMIJO: No, Your Honor.

13 THE COURT: Can he be excused from the
14 defendants' standpoint?

15 MR. VILLA: Your Honor, we may reserve.

16 THE COURT: You want to reserve him?

17 MR. VILLA: Yes.

18 THE COURT: All right. So you'll stay
19 under call. And you may get called again, but
20 you're free to leave the courthouse, and you will
21 not be allowed in the courtroom while the
22 proceedings are taking place.

23 THE WITNESS: Yes, sir.

24 THE COURT: Thank you for your testimony.

25 THE WITNESS: Thank you.

1 THE COURT: All right. Ladies and
2 gentlemen, you've worked very hard this week. I
3 appreciate all your patience.

4 You remember last week when I told you
5 that don't treat the Government shutdown as a snow
6 day? On Monday it's a snow day. So don't show up
7 here to this courthouse. There will be a few
8 security guards roaming around, but that's about all
9 that's here.

10 I'm going to go see that grandson and buy
11 him a breakfast and watch him ride his bike. Then
12 I'm going to fly back to Albuquerque on Monday, and
13 then drive back down. So nobody is going to be
14 here.

15 So y'all have a good weekend. Be safe.
16 Thank you for all your hard work. And we'll see you
17 Tuesday at 8:30. Have a good weekend.

18 (The jury left the courtroom.)

19 THE COURT: All right. Y'all have a good
20 weekend. I appreciate your hard work. Y'all have
21 been a good group to work with, and I appreciate it.

22 (The Court stood in recess.)
23
24
25

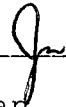
1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages
8 constitute a true transcript of proceedings had
9 before the said Court, held in the District of New
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 4th day of February, 2019.

13
14 
15 Jennifer Bean, FAPR, RMR-RDR-CCR
16 Certified Realtime Reporter
17 United States Court Reporter
18 NM Certified Court Reporter #94
19 333 Lomas, Northwest
20 Albuquerque, New Mexico 87102
21 Phone: (505) 348-2283
22 Fax: (505) 843-9492
23 License expires: 12/31/19
24
25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com